

diskriminacije **Zaštita od diskriminacije**
dijaloga **Multikulturalizam** **Afirmacija** **različ**
Osnaženost **Jednakost** **Socijalna** **Zak**
Stop etničkoj distanci **Ravnoprav**
različitosti **Učešće u svim sferama društvenog**
inkluzija **Zabrana diskriminacije**
Ravnopravnost **Kultura dijaloga** **Multik**
u svim sferama društvenog života **Vidljivost o**
diskriminacije **Zaštita od diskriminacije**
Kultura dijaloga **Multikulturalizam** **Afirmacija**
Vidljivost **Osnaženost** **Jednakost** **Socijalna**
od diskriminacije **Stop etničkoj distanci**
Afirmacija različitosti **Učešće u svim sferama**



THE POSITION OF ROMA AND EGYPTIANS IN MONTENEGRO

THROUGH THE PRISM OF THE OPERATIONS
OF THE PROTECTOR OF HUMAN RIGHTS
AND FREEDOMS OF MONTENEGRO
AND THE STATUS FROM FIELD VISITS



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THROUGH THE PRISM OF THE OPERATIONS OF THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS OF MONTENEGRO AND THE STATUS OBSERVED DURING FIELD VISITS

The institution of the Protector of Human Rights and Freedoms of Montenegro

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I INTRODUCTION

The Sector for protection against discrimination, vulnerable groups and gender equality of the institution of the Protector of Human Rights and Freedoms of Montenegro visited Roma and Egyptian settlements during 2022 as part of a proactive approach to the community and the identification of key issues that they face in everyday life, which hinder inclusion and an equal position in society. The team for visits consisted of Nerma Dobardžić Kurti, the Deputy Protector of Human Rights and Freedoms of Montenegro, and Milena Krsmanović Iković, Advisor to the Protector. Approaching the Roma and Egyptians was planned through visits to Roma and Egyptian settlements, data collection in the field and continuous communication with community representatives, local authorities and civil society. Tours and direct interviews with the representatives of communities and local self-governments represent important material and a source of information for the preparation of this report.

According to the results of the survey from 2022,¹ conducted within the “Horizontal Facility for the Western Balkans and Turkey 2019-2022”, through the “Promotion of Diversity and Equality in Montenegro” activity, the beneficiaries of which included the institution of the Protector of Human Rights and Freedoms of Montenegro, in relation to the question of to what extent discrimination is generally expressed against Roma and Egyptians, 21.3% of the respondents believe that it is strongly present, and 35.7% of the respondents that it is mostly present, whereas 13.2% of the respondents think that it is mostly not present and 20.6% think that it is not present at all. Therefore, as many as 57% of the respondents believe that discrimination is strongly or mostly present against Roma and Egyptians. Comparing this data with the survey from 2020, it is noted that according to the members of this community, according to the citizens' assessment, the degree of discrimination is somewhat less pronounced than it was two years ago (2020), when 22.2% of the respondents believed that discrimination against Roma and Egyptians was strongly present.²

According to the same survey source, 57.6% of the respondents believe that Roma and Egyptians are exposed to discrimination in the field of employment (60.1% in 2020), followed by political belief (72.0%), age (65.2%) and disability (63.1%). On the other hand, 35.6% of the respondents believe that Roma and Egyptians are exposed to discrimination in the field of education, which is the highest degree of discrimination compared to all other groups (disability 33.2%, age 27.4%, sexual orientation 19.4%, etc.). The highest degree of discrimination in terms of healthcare is also expressed against the Roma (32.3%), followed by the elderly (26.7%), and persons with disabilities (26.1%). In the field of culture, a high level of perception of discrimination against Roma and Egyptians is also measured (29%), slightly less in relation to political belief (31.3%) and disability (27.8%). The situation is similar in terms of the perception of discrimination in the work of public services. According to synthetic data, and based on the average value for all the above fields in which the perception of discrimination was measured, Roma and Egyptians are exposed to unequal treatment the most, which is the attitude of 37.3% of the respondents, followed by persons with disability (35.5%), political belief (33.7%), elderly persons (32.9%), sexual orientation (24.2%), etc.

1 CEDEM, Obrasci i stepen diskriminacije u Crnoj Gori 2022, novembar 2022. godina, available at: <https://www.cedem.me/wp-content/uploads/2023/02/MNE-10.02.2023-2.pdf>

2 A total of 997 respondents participated in the survey, providing a standard measurement error of +/-3.1% for events with an incidence of 50% and a 95% CI.

Moreover, regarding the question of the advantages or disadvantages of belonging to a certain group, as many as 54.1% of the respondents consider that belonging to the RE population is a disadvantage, which, if persons with disability are excluded, as 60.5% of the respondents consider a disability to be a disadvantage, represents the highest value in relation to all other groups at risk of discrimination. In terms of measuring the level of social distancing, 25.2% of the respondents do not want Roma and Egyptians in the neighbourhood, which is a significantly lower value compared to homosexuals, whom as many as 40.0% of the respondents do not want to have as neighbours.

The EU Montenegro Progress Report 2022³ states that Roma and Egyptians are the most vulnerable minority community and that their socio-economic situation worsened during the COVID-19 pandemic. The Report further states that, compared to previous years, there is a trend of increasing the budget allocated to supporting the inclusion of Roma, but there is a lack of proper planning and monitoring, as well as financial control. In September 2021, the Ministry of Justice and Human and Minority Rights granted EUR 320,000 to CSOs for 21 projects for social inclusion and the promotion and protection of the human rights of Roma and Egyptians in Montenegro. In 2022, EUR 380,000.00 was granted for the financing of projects/programmes of NGOs in the field of the protection and promotion of human and minority rights, the protection of the rights of Roma and Egyptians, and the funds were allocated for the projects of 25 organizations.⁴

From the procedures for protection against discrimination before the Protector, and through monitoring the level of compliance with domestic regulations and international documents in the field of the protection of minorities, it is noted that the position of this social group in Montenegro is still unfavourable in all key aspects of life, from social and economic status, to education and exclusion from political participation.

The results of the available public opinion surveys on the perception of discrimination indicate that the Roma are at the top of the list of the most discriminated groups in Montenegrin society. The marginalization and social exclusion of the Roma are predominantly caused by the lack of sustainable solutions in education, employment and socio-economic status, which has led to generational poverty that cannot be overcome without the implementation of appropriate affirmative action. The available data indicates that poverty among Roma and Egyptians is 4 to 5 times more prominent than among the majority population.

The key issues that hinder, slow or prevent the social inclusion of Roma and Egyptians are primarily related to the low level of education and professional skills; lack of personal documents and unresolved legal status; difficult economic and social position; informal employment and a very limited range of jobs; living in unsafe and non-standard residences; lack of guarantees in the form of real estate and permanent sources of income; and discrimination and non-acceptance from the wider community.

Poor education causes an unfavourable position of Roma and Egyptians in the employment process, which is a consequence of the high unemployment rate and the risk of extreme poverty. The employed Roma and Egyptians are exposed to discrimination and the violation of labour rights, which they do not report out of fear of job loss, but also insufficient knowledge of the available protection mechanisms. This population category is mainly employed in the utility sector, in the field of maintaining hygiene, collecting secondary raw materials and performing heavy manual work.

Roma and Egyptians are still isolated from the rest of the population, and they mostly live in settlements that are separated from settlements with non-Roma population. As a result of this physical separation, all kinds of social distance and exclusion are increasing.

3 <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf>

4 The decision on allocating funds for the financing of projects/programmes of NGOs in the field of the protection and promotion of human and minority rights, protection of the rights of Roma and Egyptians in 2022, available at: file:///D:/Downloads/odlu-ka-re-2022.pdf

There are no Roma and Egyptians in political decision-making in Montenegro, which is one of the essential reasons for their inability to participate in decision-making in the areas of life and activity directly concerning them. The participation in the decision-making process is limited to direct voting during the elections. Roma and Egyptians do not have authentic representatives in the Parliament of Montenegro, or in the assemblies of local self-government units, although this right is provided to all other minorities. Amendments to the Law on the Election of Councillors and Members of Parliament failed to ensure the creation of conditions for the minimum representation of Roma and Egyptians, and the threshold for entering the national and local parliaments remained unattainable for this minority group. The issue of political underrepresentation was recognized in the previous and current Strategy for the Social Inclusion of Roma and Egyptians 2021-2025, indicating that certain strategic objectives have still not been achieved.

According to the Report on the current status of the Roma community in Montenegro in 2022, submitted to the Protector by the **Roma Council** for the purpose of preparing the Work Report, members of the Roma and Egyptian community face various forms of marginalization - economic, political, educational and cultural - and that they are one of the minority communities in the most difficult position in many countries. It points to the need to resolve the issues faced by women and children, the gap in the level of education, healthcare, social welfare and unemployment, all in relation to the majority population, as well as the provision of adequate housing conditions, resolving the issue of not having personal documents, and the struggle against antigypsyism and all forms of national, racial, religious or gender discrimination and segregation of Roma and Egyptians. With regards to economic status and employment,⁵ the Roma Council states that most Roma and Egyptians included in the survey do not have jobs (as many as 70%), and that men are significantly more employed and are more often in the active workforce among those looking for work. Data indicates that those who are unemployed and looking for work do so for an average of 6.7 years. With regards to housing, the Report indicates that most Roma and Egyptians claim to live in settlements with the majority population, but that 42.2% of them live in settlements with only Roma and Egyptians. According to the respondents' perception, fewer Roma and Egyptians claim to live in segregated communities than in 2016. With regards to civil status and the possession of personal documents, the survey shows that somewhat more than half of the respondents claim to belong to the so-called domiciled Roma and Egyptians, whereas 42.8% claim to have moved to Montenegro. The survey further indicates that among Roma and Egyptians who identify themselves as domiciled and those who have recently settled, there are no statistically significant differences when it comes to having a valid ID and birth certificate, but that there are statistically significant differences in terms of having a certified health card (97.9% of domiciled Roma and Egyptians claim to have one, compared to 93% of immigrants), registration of children in birth registers (97.7% of domiciled Roma and Egyptians claim that their children are registered compared to 92.1% of immigrants), as well as a certificate of citizenship (88.2% of domiciled Roma and Egyptians claim to have the certificate compared to 79.6% of immigrants). In terms of distance learning during the COVID-19 epidemic, every second respondent says that their child could not follow distance learning, and that the largest percentage of the respondents did not have any kind of education (32.5%). The survey further indicates that there are statistically significant differences in the level of education between men and women, and that the percentage of women without any kind of education or with less than four grades of primary school is significantly higher than that of men, for example 43.2% of the women participating in the survey claim that they have not attended any level of education, whereas it is the case for 22.6% of the men. The survey also shows that just less than half of the respondents claim to use the services and help of centres for social work, while almost 40% claim to receive financial aid every month, and that in this regard, an increase in the number of users of the services of centres for social work is noted.

5 DeFacto Consultancy and Ministry of Justice, Human and Minority Rights "Socio-ekonomski položaj Roma i Egipćana u Crnoj Gori", 2020, survey available at: https://mmp.gov.me/organizacija/OUZ_RAE/234675/NOVO-ISTRAZIVANJE-O-SOCIJALNOJ-INTEGRACIJI-ROMA-I-EGIPCANA.html.

II LEGAL AND STRATEGIC FRAMEWORK

Through the provision of Article 9 governing the legal order, the constitution of Montenegro determines that confirmed and published international agreements and generally accepted rules of international law represent an integral part of the internal legal order, they prevail over domestic legislation and they directly apply when they regulate relations differently from internal legislation. The Constitution guarantees special minority rights, through the provisions of Article 79 on identity protection and Article 80 on assimilation prohibition.

It is a general evaluation that Montenegro has a developed normative framework for the protection of minority rights through constitutional and legal guarantees, and it ratified two strategic documents of the Council of Europe, the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages. The European Convention on Human Rights (ECHR) also provides indirect protection of minority rights, through, among other things, guarantees of the right to respect for private and family life (Article 8); the right to freedom of thought, conscience and religion (Article 9); the right to freedom of expression (Article 10); the right to freedom of peaceful assembly and to freedom of association with others (Article 11), whereas the provision of Article 14 and Article 1 of Protocol No. 12, among other personal characteristics, prohibits discrimination in the enjoyment of the rights outlined in this Convention or the law on any ground such as race, colour, language, religion, national or social origin, or association with a national minority.

Although there is no international instrument (universal or regional) that contains a definition of a minority, in 1977, Francesco Capotorti, Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, defined the minority as a group numerically smaller than the rest of State and that is not in a dominant position and whose members - the citizens of that State - have ethnic, religious and linguistic characteristics that differ from the characteristics of the rest of the population and, even if only implicitly, they maintain a sense of solidarity, aimed at preserving their culture, tradition, religion and language. The Montenegrin legislator opted for a definition close to the definition of national minorities by Francesco Capotorti and thus, according to the definition from the Law on Minority Rights and Freedoms, a national minority and other national minority community is any group of citizens of Montenegro, numerically smaller than the rest of the prevailing population, with common ethnic, religious or linguistic characteristics, different from the rest of the population, historically linked to Montenegro and motivated by the desire to express and preserve national, ethnic, cultural, linguistic and religious identity.

Article 79 of the Constitution guarantees the following special - minority rights:

1. to the expression, preservation, development and public expression of national, ethnic, cultural and religious special features;
2. to the selection, use and public display of national symbols and the celebration of national holidays;
3. To the use of their language and script in private, public and official use;
4. to education in their own language and script in state institutions and for the curricula to include the history and culture of national minorities and other national minority communities;
5. that in areas with significant participation in the population, local self-government bodies, state

- and judicial bodies conduct proceedings in the language of national minorities and other national minority communities;
6. to establish educational, cultural and religious association financially supported by the state;
 7. to write and use their own name and surname in their own language and script in official documents;
 8. in areas with significant participation in the population, to have traditional local names, street and settlement names, and topographic marks also written in the language of the national minorities and other national minority communities;
 9. to authentic representation in the Parliament of Montenegro and assemblies of local self-government units in which they make up a significant part of the population, in accordance with the principle of affirmative action;
 10. to proportional representation in public services, state and local self-government bodies;
 11. to being informed in their own language;
 12. to establish and maintain contacts with citizens and associations outside of Montenegro with whom they share national and ethnic origin, cultural and historical heritage, as well as religious beliefs;
 13. to the establishment of councils for the protection and promotion of special rights.

Furthermore, Article 80 of the Constitution prohibits the forced assimilation of members of national minorities and other national minority communities and stipulates the state's obligation to protect members of national minorities and other national minority communities from all forms of forced assimilation.

The Law on Minority Rights and Freedoms⁶ governs the rights and freedoms of national minorities and the mechanisms of protection of those rights in more detail. The law governs the manner of preserving the national identity of minorities and provides protection against the assimilation of minorities, as well as the effective participation of minorities in public life. With regards to the right to participation, and in addition to the constitutional and legal regulation of the right to proportional or authentic representation, the UN Committee on the Elimination of Racial Discrimination in its Montenegro Report 2018, expresses concern that in political and public life at the national and local levels, there is no authentic representation of all the ethnic and national minority groups (especially Roma and Egyptians), including decision-making bodies. The Committee is also concerned that the special conditions laid down in the electoral legislation regarding political parties representing national minorities do not favour the representation of Roma and Egyptians. The Committee recommends that the state redoubles its efforts to improve the representation of all ethnic and national minority groups, particularly Roma and Egyptians in political and public life, including taking special measures for the political and social empowerment of Roma and Egyptians in the public sector at the national and local levels. The effective participation of national minorities in various areas of public life ensures social cohesion and the development of a truly democratic society. Recognition of the right of political participation to national and ethnic minorities is one of the key aspects of minority protection in modern democracies, as it ensures the integration of the minority population into civil society.

The law stipulates that a national minority or other national minority community and their members, in order to preserve their overall national identity and promote their freedoms and rights, may establish a council of that national minority or other national minority community. The national minority may establish only one council selected for the period of four years, with no less than 17 members. The council of the national minority or other national minority community is composed of ex officio members and members elected by secret ballot, at the electoral assembly of that national minority or other national minority community. According to the Rules for the election of members of the council of a national minority or other national minority community, the ex officio council members make up no more than half of the total number of council members, whereas the total number of council members may not exceed twice the number of ex officio members, unless that number is lower than the minimum referred to in Article 33 (4) of the Law on Minority Rights and Freedoms.

⁶ "Official Gazette of the Republic of Montenegro", Nos. 031/06, 051/06, 038/07, Official Gazette of Montenegro, Nos. 002/11, 008/11, 031/17

Regarding the aforementioned provisions of the Law stipulating the election of members of the council of a national minority or other national minority community, the Protector, based on the complaint of 53 applicants, conducted an examination procedure and issued an opinion with recommendations sent to the Ministry of Justice, Human and Minority Rights, in particular: to consider possible amendments to the Law on Minority Rights and Freedoms, in the part governing the election of members of the council of a national minority or other national minority community, in a way that would, to the extent possible, ensure non-(indirect) elections based on the freely expressed will of the national minorities and of other national minority communities; as well as that the procedure for proposing amendments to the Law on Minority Rights and Freedoms is followed by broad and intensive consultations with relevant actors dealing with issues of the rights, positions and interests of national minorities, including representatives of councils of national minorities and other national minority communities.⁷

Furthermore, the Law on the Prohibition of Discrimination⁸ prohibits any form of discrimination, on any basis, and defines the mechanisms for protection against discrimination, including the procedure for complaints before the Protector of Human Rights and Freedoms of Montenegro, as well as judicial protection through the procedure conducted according to the claim for the protection against discrimination. Article 2 (2) of the Law defines discrimination as “any legal or factual distinction or unequal treatment and/or failure to treat a person or a group of persons in relation to other persons, as well as excluding, limiting or prioritizing a person in relation to other persons based on race, skin colour, nationality, social or ethnic origin, connection with a national minority or national minority community, language, religion or belief, political or other opinion, gender, gender reassignment, gender identity, sexual orientation and/or intersex characteristics, health condition, disability, age, property status, marital or family status, affiliation with a group or an assumption of affiliation with a group, political party or other organization, as well as other personal characteristics.” According to Article 5 of this Law, regulations and special measures aimed at creating conditions for the realization of national, gender and overall equality and the protection of persons in an unequal position on any basis may be passed and/or introduced and implemented by state bodies, state administration bodies, bodies of local self-government units, public companies and other legal entities exercising public powers, as well as other legal and physical entities, within their competences and powers. Article 9 of the Law prohibits segregation as a special form of discrimination, Article 9a prohibits hate speech, and Article 17 prohibits racial discrimination.

In order to improve the position of the Roma and Egyptian communities in Montenegro, the Government of Montenegro adopted the Strategy for the Social Inclusion of Roma and Egyptians 2021-2025. This document was preceded by the Strategy for the Social Inclusion of Roma and Egyptians in Montenegro 2016-2020, which focused on the following activities: 1. Solving the housing problems of Roma and Egyptians; 2. Regulating the legal status of Roma and Egyptians; 3. The provision of appropriate healthcare, particularly for the most vulnerable Roma and Egyptians; 4. Strengthening the representation of Roma and Egyptians in state administration bodies, and 5. Increasing the number of Roma and Egyptians attending primary and secondary schools.

The Strategy for the Social Inclusion of Roma and Egyptians 2021-2025 is focused on improving the socio-economic and legal status of Roma and Egyptians in Montenegro through building an inclusive and open society based on the fight against and elimination of all forms of discrimination, antigypsyism and poverty. In order to achieve this strategic objective, the document defines the following seven principles:

1. The principle of the social inclusion of Roma and Egyptians;
2. Fight against discrimination, antigypsyism, segregation and domestic violence;
3. Fight against trafficking in human beings and child marriages;
4. Improvement of the existing level of education, healthcare and social welfare of Roma and Egyptians;

⁷ Opinion available at: https://www.ombudsman.co.me/docs/1649848693_160032022_preporuka_mplj.pdf

⁸ “Official Gazette of Montenegro”, Nos. 046/10, 040/11, 018/14, 042/17

5. Fight against all forms of exploitation and violence against women and children (with an emphasis on gender equality);
6. The attainability of the set objectives and accompanying indicators;
7. The active participation and inclusion of Roma and Egyptian civil society in the process of implementing and monitoring the strategic document implementation.

The strategy elaborates on the following ten operational objectives: 1. Promoting the institutional and social fight against all forms of discrimination and antagonism faced by Roma and Egyptians; 2. Reducing the level of poverty, social exclusion and the existing socio-economic gap between Roma and Egyptians and the majority population; 3. Increasing the level of political participation and representation of Roma and Egyptians in the process of drafting, implementing and monitoring public policies; 4. Providing permanent, decent, affordable and desegregated housing for Roma and Egyptians; 5. Promoting accessible, effective and quality education for all Roma and Egyptians; 6. Providing access to quality and sustainable employment for Roma and Egyptians; 7. Improving healthcare for Roma and Egyptians and increasing equal access to a quality healthcare system and social services; 8. Promoting the position of Roma and Egyptians through resolving the issue of civil status and the possession of personal documents; 9. Promoting the legal and institutional protection of Roma and Egyptian women against gender-based violence; 10. Ensuring the social and legal protection of Roma and Egyptian children against domestic violence, child and forced marriages and begging.

All operational objectives include performance indicators with accompanying values, which need to be achieved in the following five-year period. The Action Plan includes activities, result indicators, competent institutions, defined deadlines for activity implementation, as well as funds for the implementation of strategic documents.

III OBSERVATIONS DURING VISITS TO SETTLEMENTS OF ROMA AND EGYPTIANS

According to the last Census in Montenegro in 2011, 6,251 persons declared that they belong to the Roma nationality, representing 1.01% of the total population, and the largest number lives in the territories of Podgorica (3988), Berane (531) and Nikšić (483), mostly in separated settlements. There were 2054 Egyptians - 0.33% of the total population.⁹ However, the Council of Europe estimations indicated that there are about 25,000 Roma and Egyptians living in Montenegro.¹⁰

In **the Capital of Podgorica**, the team for visits met with the Secretary of the Secretariat for Social Welfare of the Capital, Ivan Terzić, and the Housing Agency representative. We shared information on the position, status and housing conditions of Roma and Egyptians in the Capital, and we also made a joint visit to the residential units with Roma and Egyptians at Vrela Ribnička.

The Office for Roma and Egyptians functions within the Secretariat for Social Welfare of the Capital. There is an opportunity for internships in the Capital for Roma and Egyptians through the "REopen Doors" project, within which two members of the community are engaged. In partnership with the "Montenesoft" Educational Centre and the Roma Council, the Capital implemented a project to train 30 young Roma and Egyptians to find jobs more easily. In 2021, 10 members of the community were trained to work on sewing machines, with the aim of their employment or self-employment, while assistance was provided in terms of equipment and tools for the first business incubator open at Konik for entrepreneurs from the Roma and Egyptian communities. Also, 18 Roma and Egyptians completed PC training at the Competence Centre.

In the Municipality of **Kolašin** an interview was conducted with Mario Reljićem, Municipality of Kolašin Secretary, and Katarina Puletić, Independent Advisor on support for marginalized groups, who informed the Protector's representatives that there were no domiciled Roma in that town, although the community was recognized through the Local Action Plan in terms of social and child welfare, in order to provide welfare services and social housing in case of need in the future.

In the Municipality of **Mojkovac**, an interview was conducted with Goran Palević, Deputy Mayor, and Bojan Mišnić, Director of the "Gradac" Utility Company from Mojkovac. We have been informed that three Roma families with around 17 members live in this town, that four of them are employed in a utility company with a regulated labour-legal status, that they all have Montenegrin citizenship, and that they are financially independent. One family lives in a facility that they built with their own funds and with the help of the Municipality, while the other two families live in a facility that was intended for social housing, equipped with basic infrastructure elements. The Municipality representatives indicated that the Roma are fully integrated into the life of the community, characterized by coexistence and mutual acceptance.

In **Bijelo Polje**, an interview was conducted with Vladimir Luković and Dženada Rizvanović from the Office for Roma within the Local Self-government Secretariat of the Municipality of Bijelo Polje. Ms Rizvanović, as the community representative, established an employment relationship for an indefinite period of time. We were informed that the Office was founded in 2014, and that the Local Action

9 Statistical Office of Montenegro - MONSTAT, Popis stanovništva, domaćinstava i stanova u 2011. godini <https://www.monstat.org/cg/page.php?id=322&pageid=322>

10 Council of Europe, Roma Population Estimates, <http://www.coe.int/de/web/portal/roma/>

Plan for the Integration of Roma 2018-2022 is an umbrella document at the local level that recognizes the needs of the community through seven areas and defines objectives, measures and activities to improve the situation. The Office representatives point out the issue of housing in the Rakonje settlement, where there are 26 buildings, and for which relocation is planned due to the proximity of the highway. This issue, as they point out, is still present due to the lack of funds to permanently solve the issue of housing for the Roma from this settlement, as well as the lack of an appropriate plot owned by the Municipality for the construction of residential units. We also talked to Miloš Kljajević, Head of the Department of Human and Minority Rights, the Municipality of Bijelo Polje, about the position of Roma in Bijelo Polje. According to Mr Kljajević, requests to resolve the issue of housing in the Rakonje settlement were sent from the Municipality to the Government of Montenegro, Ministry of Human and Minority Rights, and Ministry of Labour and Social Welfare, but there have been no answers.

Municipality representatives have also informed us that, according to the last Census, there are 334 Roma in Bijelo Polje, though there are 415 of them according to unofficial data. All of them have a regulated civil status and there are mediators engaged in education, healthcare and employment. Municipality representatives stress that the children attend all levels of education, that 22 children enrolled in three primary schools in the 2022-2023 school year, that two members of the community attend secondary education, along with two young people attending higher education at study programmes in Nikšić.

The Team visited the Rakonje and Nedakusi settlements in Bijelo Polje. There are about 35 houses in the Rakonje settlement, access to water and electricity is provided, and the residents have a regulated status. In this settlement, the community representatives pointed out the issue of the metal fence next to the road, which prevents access to some houses. The Nedakusi settlement is characterized by wooden, dilapidated and very poor shacks that are home to five (5) Roma families who have not had access to water or electricity for 25 years. The settlement residents have personal documents, and they deal with the collection of secondary raw materials.

In the Municipality of **Berane**, we visited five settlements with 757 Roma and Egyptians living in very bad conditions. In the Riverside, Rudeš, Ranč, Pešca and Talum settlements, there are about 400 children, with about half of them attending primary/secondary schools. According to the people we talked to, there are no children attending preschool institutions. In the Municipality of Berane, there are more than 100 people with unresolved status and personal documents, and only four (4) persons are formally employed.

In the Riverside community, there is an issue of municipal waste, lack of containers, and faeces spilt in the settlement's yard. There are about 80 families in this settlement, mostly IDPs and two domicile families, most of them with documents. All children are enrolled in school, they have transportation provided, while the quality of education, as they state, is not at the expected level. They point to the issue of begging of children. All of them have access to water, whereas certain households do not have electricity. There is a prominent issue of high humidity in residential buildings, with negative consequences, especially on the health of children. The humidity issue is also a consequence of the settlement's proximity to the river, which often floods and leads to the temporary displacement of residents. In this regard, through the procedure initiated by the Protector on their own initiative, the issue of the possible relocation of the Riverside settlement was raised, as the settlement was flooded due to heavy rainfall at the end of 2022. According to the official documents, the Ministry of Finance agrees that the Government of Montenegro participates and provides financial support of up to EUR 400,000.00 from the current budget reserve for solving this issue, with the previously obtained consent of the Government of Montenegro.

There are about 20 families in the Rudeš settlement; they have electricity, though access to water is not provided for every household and they use joint plumbing. Waste is regularly collected. The residents stated that they are exercising their rights from social and child welfare.

There are four (4) families with about 30 members at the Ranč settlement. The residents pointed out that the land on which the buildings are located has been sold and that their housing is uncertain. They mainly deal with the collection of secondary raw materials.

There are five (5) Roma families in the Pešca settlement; there is no electricity or regulated waste collection. The residents pointed out that they are below the threshold of the risk of poverty, that they do not have enough basic food, and that the living conditions are unworthy of a human being. There are about 45 families in the Talum settlement. Access to water and electricity is provided, along with the municipal waste collection services. The residents of this settlement primarily deal with the collection and processing of secondary raw materials, too.

Interviews about the position of Roma and Egyptians were conducted with the representatives of the local self-governments in **Gusinje, Plav and Andrijevisa**. The Protector's representatives were informed that there are no permanently settled members of this population in these municipalities, but that during the summer season and holidays, they come to Plav and Gusinje to beg. Together with the representatives of the Municipality of Andrijevisa, the Protector's representatives visited the Kraljštica settlement in which there are two IDP families and families in a state of social need. The complaint forms were distributed and the responsibilities of the Protector were clarified in that settlement.

The position of Roma and Egyptians in the Municipality of **Ulcinj** was discussed with Bećir Selaj, Deputy Mayor, Ivana Karađinović, Municipality Manager, and Arijana Kurmemović, Mayor Associate. Information was exchanged on the activities of the Municipality to improve the position of the Roma, their status and areas in which joint action should be taken. The issue of solving the legal status in Montenegro and the impossibility of exercising rights was singled out as a priority. Three Roma and Egyptian settlements, Bijela Gora, Totoši and Kodre, were visited by the Municipality representatives. In terms of living conditions and unresolved legal status in Montenegro, the most difficult situation was found in the Bijela Gora settlement. Residents of the other two settlements stated that they live in acceptable conditions, and that they mostly have documents and have no objections regarding healthcare and social welfare, education and employment. Flyers and complaint forms were distributed in order to share more information about the work and contact details of the Protector.

A visit to the settlements with Roma and Egyptians was also undertaken in the Municipality of **Nikšić**, where we talked to Marko Kovačević, Mayor, and his associates in dealing with the position of this community, Kristina Vasiljević and Miljaim Delija.

Mayor Kovačević introduced us to the activities carried out by the Municipality of Nikšić in order to improve the living conditions of Roma and Egyptians, emphasizing that they were the beneficiaries of the joint programme of the European Union and the Council of Europe ROMACTED 1 and that they are partners in the implementation of ROMACTED 2, that International Roma Day was celebrated in Nikšić for the first time in 2022, as well as that the "Roma Word" TV show is aired once a month in cooperation with TVNK. The Municipality representatives clarified that begging and forced marriages are still present, but that there has been progress in solving these issues in recent years. There are about 50 Roma employed in the Utility Company, whereas there are two (2) mediators engaged in education and healthcare each, and one (1) in employment, the Municipality representatives say. According to preliminary information, it was expected that by the end of June 2022, almost all Roma and Egyptians in the territory of the Municipality of Nikšić will have a settled status, as a part of the project activities and assistance provided by UNHCR.

According to unofficial data, there are between 1200 and 1300 Roma and Egyptians in the Municipality of Nikšić, primarily in "Budo Tomović" (Željezara), under the Trebjesa and Brlja settlements.

There are about 150 residents in the "Budo Tomović" settlement, they have water and electricity, and access to municipal infrastructure is provided. They say they exercise rights regarding social and child welfare, and some of them are engaged by the Utility Company. It was noticed that some

families live in solid-construction buildings. In the settlement under Trebjesa, there are more than 500 domiciled Roma and displaced persons, they also have water and electricity, as well as access to municipal infrastructure. They complained about the humidity in the interior of the buildings due to, as they stated, poorly done plumbing. The Brlja settlement is mostly populated by the domiciled Roma, who have a regulated status, as well as access to water and electricity. However, their daily life is hindered by an unregulated landfill and there are no containers for waste disposal. The residents of this settlement mostly live in substandard facilities.

The position and status of the rights of Roma and Egyptians in the Municipality of **Bar** were discussed with Naser Krajo, Independent Advisor for Minority Rights and Freedoms. We visited Roma settlements together.

There are about 240 domiciled Roma in Stari Bar, they are integrated into society, their legal status is regulated and they enjoy equal access to rights, whereas there are about 220 IDPs in three informal settlements: Sokolana, under Volujica and Sutomore.

The Municipality of Bar has the Local Action Plan for the Social Inclusion of Roma and Egyptians 2020-2022, drafted within ROMACTED, the joint programme of the EU and Council of Europe.

There are about 43 persons without citizenship in the Municipality of Bar, and the lack of financial resources to resolve their status puts them at a high risk of statelessness. The displaced persons do not have appropriate housing conditions, and they mostly live in shacks and tin facilities. Certain results have been achieved in education, and one associate is engaged in the social inclusion of RE in education. There is no accurate data on the number of children who attend preschool institutions, and it is emphasized that the use of the official language represents a barrier to inclusion in preschool education, which is why the engagement of associates is similar to the way of engaging associates in primary education is initiated.

There are 78 children attending primary school, whereas seven (7) completed the ninth grade in 2022. Secondary schools are attended by five (5) young people. All the pupils/students are granted free tickets for city transport.

Roma and Egyptians in the Municipality of Bar primarily deal with waste recycling and the maintenance of public areas, i.e. jobs within the Utility Company.

There are about 15 families in the Sokolana settlement, most of whom live in wooden and tin facilities. They have access to water and electricity, but they have a problem with access to the municipal infrastructure (waste disposal and collection). The issue regarding the lack of containers and waste collection is shared by the residents of the settlement under Volujica, with about 10 families.

In the Sutomore settlement (children's resort) with several families, the issue of access to municipal infrastructure has also been noted, which is only a consequence of the fact that the displaced persons in Bar live in informal settlements, which makes it impossible to permanently solve the issues related to municipal and sewage activities. During the visit to the Sutomore settlement, we were informed that there is a threat of eviction for three (3) families, with over 20 members, from the facilities they live in, and the demolition of those facilities, which is why the Protector has initiated proceedings on the Protector's own initiative.

Three (3) settlements with Roma and Egyptians were visited in **Tivat and Herceg Novi**.

During direct conversations with families in two Roma settlements in Tivat and one in Meljine, we became familiar with the living conditions and issues they face every day. In the Lovanja settlement, the residents emphasize the issue of access to municipal infrastructure (water), as well as an unfavourable position they connect with the lack of formal employment. The community representatives said that they have personal documents, and that the children regularly attend school classes, with

the involvement of associates for the social inclusion of Roma in education. There are about 25 houses with more than 100 families in Lovanja.

There are more than 20 Roma homes at the second location in the Municipality of Tivat; they have access to the municipal infrastructure (water, electricity) and a regulated status, whereas the children regularly attend school classes. Some of the residents are employed by "Komunalno" d.o.o. Tivat, which pays contributions for mandatory social insurance for them. However, they complain about the housing conditions.

In the Roma settlement in Meljine, there are 11 households with about 50 members. They have access to municipal infrastructure (water and electricity) and a regulated status. Children are enrolled in educational institutions, some of the residents are employed, while some are receiving pensions. The residents of this settlement also emphasize the issue of housing in terms of poor construction quality, the dilapidation of facilities, inadequate furniture and appliances in households, etc.

The competences of the Protector were explained to the residents of all three settlements, and the complaint forms were distributed to them.

IV KEY OBSERVATIONS IN CERTAIN AREAS

4.1. EDUCATION

Montenegro ratified the United Nations Convention on the Rights of the Child and accepted the obligation to declare primary education compulsory and available free of charge. This clearly entails responsibility for all children without exceptions, and efforts to make education at all levels accessible and affordable, with appropriate measures of support and financial assistance.

Montenegro also accepted the Millennium Declaration, which includes a series of measurable and time-defined objectives related to human development. One of the Millennium Development Goals is to ensure that, by 2015, 100% children everywhere, boys and girls alike, will be able to complete a full course of primary schooling. This is an additional reason to pay due attention to the inclusion of Roma and Egyptian children and prevent dropping out of the education system early, and to demonstrate a readiness to meet the accepted goals.

The creation of a quality, comprehensive and accessible education system is a key factor in combating the social exclusion of Roma and Egyptians. Their appropriate inclusion in the education system would significantly impact the reduction of poverty, the growth of the employment rate, the reduction of differences in access to social goods, political representation in representative bodies and decision-making points, strengthening the capacities for the exercise of human and civil rights, and the reduction of prejudices and social distance by other communities. Quality education at all levels is a sure way to create an inclusive society, weaken the systemic mechanisms of discrimination and encourage the involvement of Roma and Egyptians in resolving the issues they face on a daily basis.

The education of Roma and Egyptian children is inseparable from the measures envisaged by inclusion through its mechanisms for including and respecting the uniqueness of each child. Inclusion particularly focuses on children who are at risk of marginalization, exclusion or achieving lower results. This indicates the system's responsibility to continuously monitor groups at greater risk and, where necessary, to take steps to ensure their presence, participation and advanced achievements in the education system. Therefore, the responsibility for failure in education cannot be sought solely in the child itself or its parents, but in the social and educational context that has not sufficiently corrected the initial inequalities of children setting out on their educational journey.

Although Montenegro has adopted legal solutions, as well as national strategies and local strategic plans aimed at creating an inclusive education system, these efforts have not been consistently and fully implemented in practice. The legislative framework and strategic documents tended to develop mechanisms for the continuous education of Roma and Egyptian children and control the quality of acquired knowledge, but also for the additional education of teaching and other staff on the importance and features of inclusive education. Several strategic approaches were implemented in the previous period but, despite certain achievements, they did not result in a comprehensive improvement of the position of Roma and Egyptians. Certain progress has been achieved in quantitative terms, so the number of Roma and Egyptians at all levels of education is higher, but compared to the involvement of the non-Roma population, it is still not satisfactory. Social marginalization and segregation still represent insurmountable obstacles for continuous education, and there is often a lack of funds and capacities for the implementation of legal regulations, policies and action plans.

According to the European Commission Report 2022, during the 2021/2022 school year, 1856 Roma pupils attended elementary school, 207 Roma attended secondary schools and 12 attended higher education. There were 192 Roma children in preschool education. It is noted that there is an increase in the inclusion of Roma children in primary and secondary education, but that there is an obvious decline in preschool and university education. The significant increase in the number of high school students compared to previous years is the result of the mentoring support of the project funded by the European Union. According to a UNICEF survey of multiple indicators, only 77% of Roma and Egyptian children of primary school age attend school and only 7% of children of secondary school age (15–18) attend secondary or higher schools, unlike the general population, where 88% of children attend secondary schools. In 2021/2022, 22 mediators for the social inclusion of Roma in education were employed in seven (7) municipalities, but the quality of education of Roma children is still a major cause for concern. The Romani language is not taught in schools.

The Report further notes a certain continuity of support in education, and that the provision of additional free textbooks in primary schools, additional mentors and associates engaged in primary and secondary schools for Roma and Egyptian pupils has continued. As in 2020, free transportation was provided for 600 primary school Roma and Egyptian pupils in the municipalities of Nikšić, Podgorica, Cetinje and Berane. Scholarships were provided to 172 Roma and Egyptian students at the secondary level and 12 at the university level. Montenegro has yet to align its regulations with the Poznan Declaration on Roma Integration in order to fully implement the Inclusive Education Strategy 2019-2025. This Strategy is implemented through a series of actions, such as counselling for schools with integrated classes, promotional activities for local communities and training for school management, teachers and professional staff.¹¹

Numerous factors impact the insufficient level of involvement and achievement of Roma and Egyptian children at all levels of education. The most common determinants that condition the low level of education of Roma and Egyptians are primarily related to the lack of finances, the subordinate socio-economic position, lack of documentation and administrative difficulties during enrolment, insufficiently educated parents and a lack of awareness of the importance of their children's education, and cultural aspects such as early marriage and traditional female roles in households where girls are most likely to be denied education.

The low level of achievement of Roma and Egyptian children in primary schools can be impacted by their low coverage of preschool education, which, among other things, is very important for overcoming language and cultural barriers. The low coverage in kindergartens reduces the possibility of Roma and Egyptian children mastering the official language before starting primary school. The insufficient quality of education in primary schools also deters them from attending secondary education, and the lack of special measures in the form of affirmation of enrolment in higher education study programmes leads to the unsatisfactory inclusion of children and young people in secondary and higher education institutions.

The distance of residential facilities from schools and preschool institutions is another obstacle in education faced by Roma and Egyptian children. Most of the families from this community are unable to provide their children with transportation from home to school and from school to home, so failure to provide free transportation by the local government represents a risk of irregular attendance and the poor quality of education. According to UNICEF research, parents of Roma children believe that the concentration of the minority ethnic population in settlements intended exclusively for them is another way of strengthening their social segregation and limiting access to social services, as well as a form of exposure to the potential risk of discrimination and intolerance from the general public, which can lead to negative outcomes in terms of children's education and their future in general.¹² In order to increase the inclusion of Roma and Egyptian children in compulsory and higher education and to prevent early dropouts, it is necessary to act to increase the parents' awareness of the importance of education for social development and a better life for children; increasing the degree

¹¹ Report, p 43 – 44, 103

¹² UNICEF, *Multidimensional Child Poverty Study in Montenegro: Understanding the Complex Realities of Children in Poverty Using a Mixed-Method Approach*, February 2021, p. 47

of inclusiveness of educational institutions; improving cooperation between institutions and parents; increasing the number of teaching assistants and mentors; providing the necessary financial resources for transportation, food and textbooks; providing scholarships to students who regularly attend education and guaranteeing a certain number of places reserved for enrolment in secondary and higher education.

To ensure appropriate education, it is important to increase teachers' expectations from Roma and Egyptian children in terms of educational achievements, and to develop different types of support in learning, as well as support for parents so that they are able to support their children. To that end, a higher degree of individualization of teaching is necessary based on the pedagogical profile of the students and the estimated need for additional support in mastering the regular curriculum. The Roma mediators play an important role in informing parents and identifying children who are not part of the education system or who are at risk of dropping out of school. Their effective engagement would improve cooperation and coordination between schools, centres for social work, NGOs engaged in the protection of the rights of this population, and parents and children.

It is also necessary to work on establishing a unique information system to include the management of data on children from vulnerable environments, which would improve the mechanisms of mutual control in complying with procedures, and provide clearer guidelines for the development of more precise and feasible local action plans for the more successful inclusion of Roma and Egyptian children. The data that schools should systematically collect and send to national institutions would refer to students' socioeconomic status, the use of social welfare and healthcare, place of residence, students' achievements on standardized tests and absenteeism. This is how a mechanism for monitoring and collecting data on vulnerable children who are at risk of dropping out or are not included in the education system would be determined, and the databases would be made available to all relevant actors. Through establishing a connected information system, the chain of responsibility of all the institutions involved in the process of enrolment and preventing dropping out of primary education would be developed.

Let us remind you of the recommendation of the Protector given in the case that will be described in more detail in chapter IV, which refers to the labour-legal status of associates for the social inclusion of Roma and Egyptians in education. In this regard, the Decision ("Official Gazette of Montenegro", No. 021/16) established the standard for the occupation of Associate for the social inclusion of Roma and Egyptians in education, which represented the first and most important step that reflected the real need to introduce this profession into the education system and stipulate the qualifications necessary to work in that profession. The associates for the social inclusion of Roma and Egyptians in education play an important role in increasing the degree of enrolment of Roma and Egyptian children, reducing dropouts, overcoming language barriers, maintaining contact with the children's parents, and ultimately improving the quality of the acquired education. Just as the need for teaching assistants and other staff is expressed through documents on the internal organization and systematization of public educational institutions, the associates for the social inclusion of Roma and Egyptians in education should be treated in the same way, as long as their engagement is based on real need and objective indicators. The possibility of establishing an employment relationship only for a fixed term is extremely unfavourable and demotivating for associates for the social inclusion of Roma and Egyptians in education, which, without a doubt, has the potential to negatively impact the educational achievements of Roma and Egyptian children.

With regards to the current practice of engaging associates for the social inclusion of Roma and Egyptians, it is important to point out that a fixed-term employment contract is provided as an exception, and that it can only be concluded for the purpose of performing tasks the duration of which is determined in advance for objective reasons or is conditioned by circumstances or events that could have not been foreseen. The employer cannot conclude one or more fixed-term employment contracts with the same employee, if their duration, continuously or intermittently, is longer than 24 months (according to the old Labour Law), and/or longer than 36 months (according to the new Labour Law).

Recommendations:

- Develop mechanisms for the continuous education of Roma and Egyptian children and parents' quality control of the acquired knowledge;
- Promote the continuous education and training of school management, teachers and other teaching staff on the importance and features of inclusive education, including the mediators;
- Create legislative and other prerequisites for the engagement of mediators in the social inclusion of Roma and Egyptians in education based on contracts guaranteeing permanent employment, and not only ad hoc employment through project activities;
- At the level of local communities, provide free transportation to school and back to their place of residence for Roma and Egyptian children;
- Develop systemic coordination between the Ministry of Education, the Ministry of the Interior and education institutions, in order to solve the long-term challenges faced by Roma and Egyptian children in terms of access to education and the educational programme;
- Encourage the enrolment of young people in mixed education institutions, in order to enable the early inclusion and reduction of differences and barriers in further education, including the engagement of mediators;
- Encourage the enrolment of Roma and Egyptian children in mixed preschool institutions in order to facilitate further education and overcome language barriers;
- Accelerate the process of amending the Law on Higher Education to provide affirmative action measures for Roma and Egyptian students.

4.2. HOUSING

A considerable number of Roma and Egyptian families are still isolated from the rest of the population, living in settlements that are separated from settlements with non-Roma populations, so as a result of such physical separation, all kinds of social distance and exclusion are increasing. The European Commission states that the mapping of Roma and Egyptian settlements in Montenegro was completed in 2021, with the help of the Regional Cooperation Council. A total of 14 municipalities with a majority of Roma and Egyptians were mapped, along with 32 Roma and Egyptian settlements. There are still challenges in coastal municipalities, where the private ownership of land can lead to the displacement of Roma families residing there.¹³

According to the results of the Ministry of Human and Minority Rights survey in 2016, the largest number of Roma and Egyptians, about 77%, lived in segregated settlements, predominantly in the municipalities of Podgorica, Nikšić and Berane. However, according to the DeFakto survey from 2020, there were fewer Roma and Egyptians living in the segregated communities than in 2016, and according to the same data source, most Roma and Egyptians lived in settlements with the majority population, but 42.2% of them lived in settlements with only Roma and Egyptians, still confirming the high level of segregation of Roma and Egyptians in Montenegro.

The same survey also shows that half of the facilities in which Roma and Egyptians live are owned by them. However, a significantly larger problem was identified in terms of the ownership of the land on which the residential facilities were built, where in the dominant number of cases, there is the issue of unresolved property-legal relations in terms of land ownership.

Overcrowding in residential facilities is an additional issue as the survey shows that an average of 5.5 household members live together in a typical Roma or Egyptian community. The largest recorded number of household members reported living together in one housing unit is 16. A large percentage of households where Roma and Egyptians live do not have the basic conditions for decent

¹³ European Commission Report 2022, p. 44

household living. For example, 9.8% claim that there is no electricity in their households, and 11.6% have no water (13.8% running water). Also, 17.8% of Roma and Egyptians do not have a bathroom or refrigerator in their residential facilities, while 20% of them do not have a stove or hot water. As many as 80% of households do not have a PC, which was necessary for distance learning during the coronavirus epidemic. Only 65.5% of households have access to the Internet (via mobile phone, Wi-Fi router or in another way), while only 55.1% of the respondents use the Internet every day. Based on data from previous surveys, a composite index of household equipment is calculated to be 0.59 based on data from 2016, 0.62 based on data from 2018, and 0.65 based on data from 2020, indicating a very slow but positive trend of improving the level of Roma and Egyptian households equipment in relation to electricity, running water, bathroom, TV, stove, cable TV, car and land line.¹⁴

During the field visits to the settlements by the Protector's team, it was noticed that Roma and Egyptians live in informal and temporary settlements, as well as that the housing facilities were built using inadequate building materials. A considerable number of families live in dilapidated and substandard wooden and tin facilities, which, along with inadequate access to municipal and other infrastructure, do not meet even the minimum guarantees for safe, decent and dignified living. Certain settlements, such as "Riverside" in Berane, are characterized by issues with the maintenance of the sewage network, so there was faeces spilt in the settlement's yard, along with a large amount of waste and no containers for waste disposal. The observed issue, reflected in the irregular collection of municipal waste, the lack of containers and the unregulated sewage system, made the Protector initiate proceedings on their own initiative and issue an opinion with a recommendation, presented in chapter IV of this Report.

Please be reminded that the United Nations defines facilities that do not meet the necessary minimum standards for housing, when they contain at least one of the following criteria:¹⁵

- Inadequate access to drinking water;
- Inadequate access to municipal and other infrastructure (sewage network, road network, electricity network, etc.);
- Inadequate access to public services (schools, hospitals, public transport, etc.);
- The poor structural quality of residential units (residential units built with inadequate construction techniques and/or from poor materials, residential units that have collapsed due to poor maintenance, etc., which are potentially dangerous for the safety of residents);
- Overcrowding in the sense of the average density of inhabitants per unit area of the settlement and/or a large number of members per household;
- The uncertain legal status of the facilities on plots (unsettled property-legal relations over facilities and land).

With regards to the current situation and the findings of the relevant survey, as well as the plans from the Strategy for the Social Inclusion of Roma and Egyptians 2021-2025, there is a need to act towards legalizing the existing housing facilities and providing the basic conditions for a decent living in housing facilities that meet the minimum standards of the right to private and family life and home.

The issue of the ownership of constructed facilities and unresolved property-legal relations regarding the land on which residential facilities were constructed, along with the legalization of buildings, requires a systemic and permanent solution, with the continuous empowerment and provision of legal and administrative assistance to Roma and Egyptians in the process of legalization. The resolution of other related issues depends on legalization, such as the improvement of infrastructure and/or the provision of sustainable access to municipal and other infrastructure (sewage network, road network, electricity network, etc.).

Apart from legalization, through the procedure initiated by the Protector on their own initiative, the issue of the possible relocation of the Riverside settlement in Berane was raised, as the settlement

¹⁴ Survey data taken from the Strategy for the Social Inclusion of Roma and Egyptians 2021-2025, p. 37-39

¹⁵ OHCHR and UN Habitat, "The Right to Adequate Housing", https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf

was flooded due to heavy rainfall at the end of 2022. With regard to this case, a statement was requested from the Municipality of Berane and the Government of Montenegro as to what they have undertaken and/or what they plan to undertake in order to solve the issue of frequent flooding in the Riverside settlement, to ensure adequate living conditions and/or a permanent and sustainable resolution of the housing problem of the inhabitants of this settlement. Acting on the request for a statement, the Cabinet of the President of the Government of Montenegro turned to the Ministry of Labour and Social Welfare, the Ministry of Human and Minority Rights and the Ministry of Finance. In this regard, the Ministry of Labour and Social Welfare basically informed the Cabinet of the Prime Minister that the Minister visited the Municipality of Berane and spoke with representatives of the local self-government, as well as with representatives of displaced persons living in the Riverside settlement; and that measures were taken in the domain of this Ministry aimed at providing assistance to these persons, so for 102 families, expert workers of the Centre for Social Work produced findings and opinions in order to provide one-time financial assistance in the amount of EUR 200.00. The Ministry of Human and Minority Rights essentially informed the Cabinet of the Prime Minister that they were included in the process from the beginning and that they sent a letter to the Ministry of Finance and the Government of Montenegro in order to use funds from the current budget reserve for the construction of new residential units for citizens of the Riverside settlement from Berane and relocating the settlement; and that they expect the Ministry of Finance to request the approval of the Government of Montenegro to allocate funds for the construction of new housing units for the Riverside settlement, that is, for the Government of Montenegro to pass a decision at a session that would resolve the situation of the residents of this settlement.

The Municipality of Berane representatives also submitted a statement to the Protector in which, among other things, they inform the Protector that the Municipality has undertaken a large number of activities in order to protect property and the population from floods; that after analysing the situation in the field, a session of the municipal protection and rescue team of the Municipality of Berane was convened, and that it was agreed that all services and municipal enterprises should be in a state of readiness and undertake activities within their competence; that the mechanization should be in the field and work to protect critical points, and that the river bed of the Lim River in the "Riverside" settlement has been filled in; that members of the municipal team for protection and rescue visited the Riverside settlement several times and helped with food and drinking water; that the Municipality helped the settlement with 90 packages of food and drinking water, and in cooperation with the Directorate for Emergency Situations, provided blankets, clothes and beds. The statement further notes that at the meeting with the Minister of Labour and Social Welfare and the representatives of the Riverside settlement, it was stated that, after the experts took a detailed look at the issue, the possibilities and options for solving this issue would be considered, in cooperation with the Government of Montenegro and relevant ministries, and with the possible assistance of international partners and organizations.

During the procedure before the Protector, the Ministry of Human and Minority Rights submitted to the Protector the document of the Ministry of Finance of 20 February 2023, which, in connection with the request for the use of funds from the current budget reserve for the construction of new residential units for the citizens of Riverside from Berane and the relocation of the settlement, states that the Ministry of Finance, bearing in mind the vulnerability of Roma and Egyptians and the challenges in solving this issue, agrees that the Government shall participate and provide financial support for solving this issue in the amount of up to EUR 400,000.00 from the current budget reserve, with the previously obtained consent of the Government of Montenegro.

Apart from the issue of legalization, it is necessary to consider the possibility of relocation to adequate housing facilities that meet the minimum standards required for normal living, if legalization of the facilities/settlements is not possible or the location where the facilities are built is unsustainable for the reasons stated in the case of the Riverside settlement or other reasons that permanently disturb the private and family life of Roma and Egyptians, then a permanent solution needs to be offered, like the relocation of Roma and Egyptian settlements, which will not increase the level of segregation of Roma and Egyptians.

Recommendations:

- Collect systematized and disaggregated data on the beneficiaries of the Regional Housing Programme, Social Housing Programme and Legalization Programme by age, gender, place of residence, number of family members and other relevant data using the Regional Methodology on the Mapping of Roma Housing¹⁶;
- Adopt urban plans for residential areas inhabited by Roma and Egyptians where legalization is possible;
- Provide continuous support and legal advice to Roma and Egyptians in the process of legalizing residential facilities;
- Undertake measures and activities to relocate settlements that cannot be legalized and/or do not meet the minimum standards for decent and safe living, including access to drinking water, municipal, sewage, road and electricity networks, as well as access to public services (schools, hospitals, public transport, etc.);
- Reduce the level of residential segregation of Roma and Egyptians in relation to the majority population, as well as the level of overcrowding in residential facilities where Roma and Egyptians live.

4.3. EMPLOYMENT

According to the information obtained by the Protector's team from field visits to Roma settlements, it generally follows that Roma and Egyptians find employment in the utility sector, in the field of maintaining hygiene, collecting and processing secondary raw materials and performing heavy manual work. In some local self-governments, authentic representatives of the community deal with the issues of Roma and Egyptians in the form of formal employment with a stable labour-legal status, which is a good practice that should be further developed in all local self-governments. The community representatives are also engaged as mediators for the social inclusion of Roma and Egyptians in education, healthcare and employment. However, there is unequal treatment between mediators in terms of labour-legal status, so for example, mediators in healthcare are able to establish an employment relationship for an indefinite period of time, while mediators in education can only establish a fixed-term employment relationship, which is why the Protector has already acted and sent an opinion with recommendations to the competent ministries. On the other hand, the European Commission states that Roma and Egyptian mediators in healthcare, employment and social protection are still engaged through projects with a limited duration, and that they should be fully integrated into the system through permanent employment contracts.¹⁷

As of 21 April 2022, there were 1,335 Roma and Egyptians (739 women) in the records of the Employment Agency, representing 2.6% of the total number of registered unemployed persons. About 96% of registered Roma have the lowest level of education, and less than 1% have secondary education, which limits the range of employment opportunities. Public works and seasonal works programmes are continuously organized, with limited long-term effect.¹⁸

The results of the 2022 survey show that 57.6% of the respondents believe that Roma and Egyptians are discriminated against in the field of labour and employment, which is slightly less compared to the 2020 survey, when 60.1% of the respondents believed that Roma and Egyptians were exposed to discrimination in this field.¹⁹ On average, there are about 800 persons declaring themselves as Roma and Egyptians on the records of the Employment Agency of Montenegro. About 55% of them are women. There are about 1.85% Roma and Egyptians in the total registered unemployed population. Over 90% of the registered Roma and Egyptians are persons without occupation and professional

¹⁶ Regional Cooperation Council, "Regional Methodology on the Mapping of Roma Housing", 2020, <https://www.rcc.int/romaintegration2020/docs/126/regional-methodology-on-mapping-of-roma-housing>

¹⁷ European Commission Report 2022, p. 44

¹⁸ *Ibid*

¹⁹ CEDEM, *Obrasci i stepen diskriminacije u Crnoj Gori 2022*, November 2022

education. Furthermore, the DeFacto survey shows that 55.8% of unemployed Roma and Egyptians are registered with the Employment Agency, whereas 44.2% of them are not registered. Somewhat less than one-third of the registered ones are not registered as Roma or Egyptians. Only 5.7% of the registered Roma and Egyptians say that they received money for self-employment or starting a business from the Employment Agency in the previous four years. The DeFacto survey further shows that most of the surveyed Roma and Egyptians are unemployed - as many as 70.7%. However, according to surveys from 2016 and 2018, as many as 84.4% and 81.9% of Roma and Egyptians included in the surveys did not have a job. There are prominent differences between women and men, so the employment rate among men is significantly higher and they are more often in the active workforce. Those who are unemployed and looking for work do so for an average of 6.7 years. Still, the percentage of unemployment according to surveys from 2016 to 2020 is seeing a certain decline, so according to the survey from 2016, that percentage was 84.40%, 81.90% in 2018, and according to the latest survey from 2020, the percentage of unemployed Roma and Egyptians was 70.7%.²⁰

Recommendations:

- Carry on the continuous campaigns aimed at raising community awareness of employment opportunities based on professional training, professional and labour skills;
- Consider the possibility of introducing subsidies and/or other benefits for employers who employ Roma and Egyptians;
- In order to encourage the employment of Roma and Egyptians, it is necessary to intensify the implementation of programmes of professional training, retraining and additional training, as well as financial support and incentives for self-employment;
- It is necessary to establish a systematic exchange of data between competent bodies and institutions, for the purpose of keeping records of beneficiaries of rights from social and child welfare who are able to work, in connection with the status of employment, professional training, retraining or additional training of Roma and Egyptians;
- At the level of local self-governments, at offices for Roma or other organizational units that deal with the position of vulnerable groups, it is necessary to engage authentic representatives of the community, so that their voice is heard more strongly, and public policies are created based on the inclusive participation of members of the community itself.

4.4. LEGAL STATUS RESOLUTION

Roma and Egyptians constitute the dominant category of displaced persons in Montenegro who have not yet regulated their legal status or are at risk of statelessness, because these persons or their parents cannot be registered in the birth registers in Montenegro or in the country of origin.

Deficiencies and difficulties in obtaining personal documents in some cases led to the inability of displaced persons to return to Kosovo or to integrate into the place of displacement, and in some cases, they could also lead to persons not having citizenship, that is, being stateless. The lack of access to or use of documents issued by the authorities in the place of displacement or the place of return (Kosovo) leads to issues in proving civil status, proving property rights, achieving access to education and social protection and assistance. The risk of losing citizenship refers to displaced persons who lost their documents or never had them, or who were born in displacement. This is why the need for regional cooperation in solving these issues has been expressed in the region of the Western Balkans, in particular Serbia, Montenegro, North Macedonia and Kosovo.²¹

At the Global Conference on Statelessness held in Geneva in October 2019, Montenegro undertook four obligations²² pertaining to: 1. continuation of the implementation of simplified procedures for

²⁰ Data taken from the Strategy for the Social Inclusion of Roma and Egyptians 2021-2025, p. 48-50

²¹ OSCE Mission in Kosovo "An Assessment of the Voluntary Return Process in Kosovo" October 2014 p. 23, Report available at: <https://www.osce.org/sr/kosovo/129351>

²² Global Conference on Statelessness, Report available at: <https://www.unhcr.org/ibelong/high-level-segment-on-statelessness-results-and-highlights/>

obtaining identification documents both at the national level and in cooperation with the countries of origin of persons affected by this issue; 2. ensuring the registration of children abandoned by their mothers in the register of births, and/or children whose mothers do not have identification documents; 3. strengthening the procedure for establishing the status of stateless persons, harmonizing regulations to ensure unhindered access to rights for persons who have obtained the status of stateless persons, and 4. the exchange of experience in the field of preventing statelessness with other countries from the region.

Solving the issue of displaced and internally displaced persons, among other things, is part of the pre-accession negotiations between Montenegro and the European Union within the framework of Chapter 23 - "Judiciary and Fundamental Rights". The latest reports for Montenegro recognize the significant progress achieved in this field and recommend that logistical assistance be provided to persons who submitted an application for status regulation with incomplete documentation, along with full access to rights.

The permanent resolution of the legal status of displaced persons from the former Yugoslav republics and internally displaced persons from Kosovo residing in Montenegro was made possible by the recognition of the right to permanent residence or temporary residence, through the adoption of the Law on Amendments to the Aliens Law, which entered into force on 7 November 2009. The deadline for submitting applications for status regulation, stipulated by this Law, was two years, i.e. until 7 November 2011. Responding to the need to regulate the legal status of a large number of those who did not do so in the specified period, the deadline in which internally displaced persons from Kosovo could apply for the approval of permanent residence and temporary residence for up to three years was extended to 31 December 2014, whereas the Aliens Law from 2018 enables persons who have been granted temporary residence for up to three years to apply for permanent residence.

Data of the Ministry of the Interior from 4 November 2022, submitted to the Protector in the procedure following a complaint by the European Roma Rights Centre, indicates that in the period from 7 November 2009, when the Law on Amendments to the Aliens Law entered into force, until 7 September 2022, displaced and internally displaced persons submitted a total of 15,258 applications for the approval of permanent residence and temporary residence for up to three years. Of this number, 15,144 applications were resolved, while the procedure for 114 applications is ongoing. Out of the 15,144 resolved cases, applications were accepted for 12,404 persons who were granted permanent residence or temporary residence for up to three years, 297 applications were rejected, while procedures in 2,443 cases were dismissed/suspended due to duplicate or incomplete applications. The document of the Ministry states that a significant number of these persons belong to the Roma population.

Social integration, exercise of the right to work and employment, education, professional training, recognition of diplomas and certificates, social assistance, health and pension insurance, tax benefits, access to the labour market and services, freedom of association, networking and membership in organizations that represent the interests of workers or employers are enabled for the displaced and internally displaced persons through the regulation of their status.

However, although simplified procedures for status regulation have been provided, including the reduction of administrative fees, there are persons who had difficulties in their home countries in the process of obtaining the required documents. Special support and assistance in regulating legal status should be provided to persons who are not registered in the birth registers in Montenegro or in the country of origin. Recognizing this need, amendments to the Law on Extra-judicial Proceedings²³ were adopted, according to which persons born outside of healthcare institutions can determine the time and place of birth in court proceedings. On the other hand, for persons born in healthcare institutions, who are not registered in the birth registers, there is the option of subsequent registration in the registers through an administrative procedure before the Ministry of the Interior.

23 "Official Gazette of Montenegro", No. 20/15

Additional assistance and protection need to be directed towards persons with reduced mobility and persons in specialized institutions, so that these persons can also regulate their legal status in Montenegro and achieve or maintain access to rights. In addition, continuous information campaigns need to be implemented, focusing on persons whose applications for status regulation are still pending before the Ministry of the Interior, in order to remind them of the importance of obtaining the documents needed to regulate their legal status in Montenegro. It is also important to continue the cooperation with the countries of origin of displaced and internally displaced persons, as it turns out that obtaining valid travel documents from the country of origin represents a serious obstacle for persons who do not have basic personal documents and are unable to prove their citizenship. This problem is registered among Roma, Ashkali and Egyptians, either because they were never registered at birth or because their records were destroyed during the 1999 Kosovo conflict.

Recognizing the need for additional efforts to integrate this social group into society, the Ministry of the Interior, the Ministry of Labour and Social Welfare and the United Nations High Commissioner for Refugees (UNHCR) office in Montenegro formed the Verification Team for IDPs from Kosovo in November 2017. The goal of this team was to make individual visits to IDPs from Kosovo and provide additional information needed to regulate their legal status in Montenegro. With the aim of establishing cooperation mechanisms for solving the status issues of IDPs from Kosovo residing in Montenegro, and in connection with subsequent registration in the basic registers (of births, marriages and deaths) and the register of citizens of the Republic of Kosovo, an Agreement was signed between the Government of Montenegro and the Government of Kosovo in 2013. In accordance with this document, the combined biometric teams of the Ministry of the Interior of Montenegro, the Ministry of the Interior of the Civil Registration Agency of Kosovo, the UNHCR and the "Pravni centar" NGO provided legal and practical assistance to IDPs from Kosovo residing in Montenegro. The UNHCR and "Građanska alijansa" NGO continued providing similar assistance and support in resolving the legal status.

Recommendations:

- Continue the implementation of simplified procedures (including certain financial incentives) for obtaining identification documents for displaced and internally displaced persons whose applications are still pending;
- Consistently implement registration procedures for children abandoned by their mothers, as well as children born in a healthcare facility and those born outside a healthcare facility in accordance with the right to universal birth registration for all children without exception;
- Continue providing legal and practical assistance to IDPs from Kosovo who reside in Montenegro and still do not have a regulated legal status;
- Strengthen cooperation with the countries of origin of displaced and internally displaced persons in order to facilitate the obtaining of documentation necessary for regulating the legal status in Montenegro;
- Continue raising awareness about affirming the right to voluntary return, by strengthening bilateral cooperation between the competent state authorities of Montenegro and the Republic of Kosovo, in order to create conditions for sustainable return and reintegration;
- Intensify activities through the Inter-institutional Initiative on Durable Solutions for Displaced Persons from Kosovo, also called the Skopje Process;
- Continuously organize info sessions and other forms of proactive action with persons who have not yet resolved their legal status.

V CASES FROM THE PRACTICE OF THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS OF MONTENEGRO

Example 1:

Labour - legal status of associates for the social inclusion of Roma and Egyptians in education:

Case description: The complainant accused the Ministry of Education and the Ministry of Human and Minority Rights of discriminating against associates for the social inclusion of Roma and Egyptians in education, in connection with the violation of labour rights and on the basis of labour. The request for protection against discrimination is based on the fact that not a single associate has established an employment relationship for an indefinite period of time, but that, every year, they conclude a fixed-term contract, from September to June of the school year. The complainant believes that this kind of behaviour violates the right to work and creates insecurity with numerous consequences that threaten the living conditions of associates for the social inclusion of Roma and Egyptians. With prima facie evidence, the complainant has indicated the possibility of discrimination, since the complainant pointed to the right that was called into question by different treatment, as well as to the personal characteristic and the group in relation to which the inequality is compared. Specifically, unequal treatment is based on a personal feature such as belonging to a group expressed through work in the education system in the position of associate for the social inclusion of Roma and Egyptians, while the position of the associates in question is compared to those employed for an indefinite period in the education system (teachers, professors, teaching assistants, administrative and accounting departments, technical department, etc.), as well as with associates for the social inclusion of Roma and Egyptians in healthcare, whose employment relationship is established for an indefinite period of time, unlike the subject associates, with only a fixed-term employment relationship.

Actions of the Protector: As the complainant made the act of discrimination probable, the burden of proof shifted to the Ministry of Education, which is the holder of the activity and the responsible entity in connection with the employment of associates in the social inclusion of Roma and Egyptians, and in accordance with the Strategy for the Social Inclusion of Roma and Egyptians in Montenegro 2016 - 2020, and the accompanying Action Plans. In this regard, the Protector requested a statement from the Ministry of Education regarding the allegations in the complaint, which essentially stated "that for the engagement of associates for social inclusion, there are certain conditions that are similar to those for teaching assistants, and are prescribed by the Rulebook on Norms and Standards for acquiring funds from public revenues for institutions implementing publicly valid educational programmes"; and that Article 42a of the Rulebook stipulates: "If more than 70 Roma and Egyptian students are educated in one school, one employee may be approved for the tasks of a social inclusion mediator, and for every additional 70 students belonging to that population, one more employee may be approved for these tasks. If more than 70 Roma and Egyptian students are educated in two or more schools, those schools may be approved one employee for the tasks of a social inclusion mediator, and for every additional 70 students belonging to that population, one more employee for those tasks may be approved." The statement also notes that "according to the law, associates for social inclusion may be hired for a maximum of 10 months, i.e. during the school year, for every 70 RE students, 1 associate for social inclusion".

Protector's assessment: The number of employees implementing the publicly valid educational programmes, according to the Rulebook referred to by the Ministry, is not conditioned by the number of

children and/or students alone in terms of associates for the social inclusion of Roma and Egyptians, but also other staff, professional associates, associates, administrative/accounting departments, technical departments and teaching assistants. Therefore, according to the opinion of the Protector, the claim that associates for social inclusion cannot be employed for an indefinite period because the number of hired associates depends on the number of students (one associate for 70 students) is not acceptable. On the other hand, the claim that it is not possible for associates for social inclusion to establish a permanent employment relationship because the school year lasts from September to the end of June does not have the character of a reasonable and objective justification and is profoundly based on an approximate and arbitrary approach. The Protector did not dispute that the number of engaged associates for social inclusion is conditioned by the number of Roma and Egyptian students; however, this fact, just as it is not an obstacle to the permanent engagement of other staff, may not represent a real obstacle for the indefinite engagement of associates for social inclusion either, as long as there is a need for their work according to the recorded number of students. With regards to collaborators for the social inclusion of Roma and Egyptians in healthcare, who form another relevant comparative group, their employment was also planned by the then Strategy for the Social Inclusion of Roma and Egyptians in Montenegro 2016 - 2020 and the accompanying Action Plans. Unlike the associates in education, some associates in healthcare, according to the case files, have established an employment relationship for an indefinite period in public healthcare institutions, as measures from the Strategy and the Action Plans, regarding the constant engagement of associates for the social inclusion of Roma and Egyptians in education and healthcare were implemented differently (unequally), to the detriment of the former, whose role in the process of inclusion and overcoming barriers in education is equally important as the role of others in the process of inclusion and overcoming barriers in healthcare.

The Ministry of Education did not prove by which objective reasons the duration of the work of associates for the social inclusion of Roma and Egyptians in education was determined, or by which circumstances or events that could have not be foreseen it was conditioned, so that only fixed-term employment contracts could be concluded in a non-negligible period of time, which is why the Protector took the position that there was discrimination against the associates for the social inclusion of Roma and Egyptians in education on the basis of affiliation with a group, and in connection with the violation of labour rights and on the basis of labour, and the Protector sent the recommendations to the

Ministry of Education:

- *Within its competencies and powers, to take measures to improve the labour/legal status of associates for the social inclusion of Roma and Egyptians in education;*
- *In consultation and coordination with public educational institutions, based on the analysis of statistical indicators on the number of Roma and Egyptian children who attend, or who will attend publicly valid education programmes, to provide consent to documents on the internal organization and systematization of jobs to include the job of associate for the social inclusion of Roma and Egyptians in education;*
- *To fully implement the activities and measures from the new Strategy for the Social Inclusion of Roma and Egyptians in Montenegro and the accompanying Action Plans, in relation to the employment of associates for the social inclusion of Roma and Egyptians in education, without exceptions regarding the establishment of an employment relationship for an indefinite period.*

The following recommendation was also made to the **Ministry of Human and Minority Rights:**

- *In the course of drafting and/or adopting the new Strategy for the Social Inclusion of Roma and Egyptians in Montenegro, to consider with due care the views of the Protector expressed in this opinion, and to ensure through planned activities and measures that associates for the social inclusion of Roma and Egyptians in education can establish an employment relationship for an indefinite period of time.²⁴*

Legislative and other prerequisites for establishing an employment relationship for an indefinite period have not yet been created for associates for the social inclusion of Roma and Egyptians in education.

²⁴ Opinion available at: https://www.ombudsman.co.me/docs/1605170523_301020202-preporuka-mpmljimp.pdf. See the opinion with the recommendation available at: https://www.ombudsman.co.me/docs/1667911581_27072022_preporuka_mp.pdf

Example 2:

Abuse of freedom of expression to the detriment of Roma and Egyptians

Case description: The Roma Council filed a complaint with the Protector because of a screenshot of correspondence between the students of the Faculty of Architecture, University of Montenegro, objecting that it contains elements of discrimination and hate speech against Roma. The screenshot of correspondence was made public on a social network (Instagram). Based on insight into the contested screenshot of correspondence, it follows that a certain group of persons communicated on Viber and expressed the following views: "filthy Konik; that's why they weren't allowed to give us this in person, is it possible that a hotel is being built in Konik; pump on the left, church behind, gypsies on the right... Otherwise, we have to present some arguments for the change of location, since I assume they will ask; the location really sucks; tell them that the location is in Konik, if they do not know; we do not need an additional argument; say that the centre for Egyptian migrants can be constructed in Konik". Within the same Viber group, there was a question about changing the location, and 18 members of the group, or 90%, voted for the change, whereas two (2) members were against it. The mentioned screenshot of correspondence was published on a social network, followed by the description: "Prejudices, Stereotypes, Repulsion, hate speech, all of that can be summed up in a few sentences." "These are the comments of the students of the Faculty of Architecture in Podgorica after receiving a location for their semester paper. These are 20-something-year-old children, one step away from a diploma and the title of university graduate and academic citizenship..."

Actions of the Protector: Considering the reason for the address, the context and the circumstances of the case, in the proceedings before the Protector, it was necessary to determine whether those messages, which were made public, abused the right to freedom of expression by violating the rights of others, under Article 17 of the Convention for the Protection of Human Rights and Fundamental Freedoms prohibiting the abuse of rights.²⁵ In other words, in the subject matter of the decision, the question was raised as to whether the persons from the controversial Viber group, whose content was made public, abused the right to freedom of expression by demonstrating offensive and stigmatizing attitudes and opinions towards the Roma and/or by expressing distance and aversion towards the Konik settlement in which, among others, there are Roma and Egyptians residents. When reaching an opinion on whether there is hate speech in that communication as a form of discrimination, the following specific circumstances were evaluated: (a) the context in which the messages were used; (b) the capacity of the persons who formed the Viber group to exercise influence over others; (c) the nature and strength of the language used (whether the messages contain misinformation, negative stereotyping and stigmatization or otherwise contribute to incitement to acts of violence, intimidation, hostility or discrimination); (d) means of communication; (e) the nature of the potential audience, etc.²⁶

Protector's assessment: The Protector did not question the right of persons who communicated within the Viber group, assumed to be students of the Faculty of Architecture, University of Montenegro, to express their ideas and views regarding the location allocated for the construction of the hotel. In view of this case, it is undisputed that freedom of expression includes the right to question and criticize the decision on the allocated location, as well as protest and requests for a change of location. However, freedom of expression cannot be manifested in a way that insults, belittles and stigmatizes a certain group of people, and/or community, by labelling someone as "filthy" or the one that "sucks". There is a particularly worrying suspicion that inappropriate and offensive speech towards the Roma and Egyptians is present in the discourse of the students of the Faculty of Architecture of the UMNE, who are expected to develop values that accept differences and reject any form of stigma and discrimination as unacceptable. Students are future academic citizens whose attitudes impact generations of different ages and interests, as reflected within the higher education institution they attend, and those attitudes will further, upon employment, be reflected in the working environment. Rights and freedoms presuppose obligations such as, among others, avoiding as much

²⁵ See ECHR case, *Molnar v, Rumania*, App. No. 16637/06, paragraph 23

²⁶ ECRI's General Policy Recommendation No. 15 on Combating Hate Speech, point 16

as possible statements that offend others and represent an attack on their rights.²⁷ The freedom of expression has an inherent obligation to discourage irresponsible actors who, by abusing it, violate the rights of others and call into question the vital values of society. According to the ECRI's General Policy Recommendation No. 15, hate speech includes the advocacy, promotion or incitement, in any form, of denigration, hatred or vilification, as well any harassment, insult, negative stereotyping, stigmatization or threat. In this regard, the practice of the European Court of Human Rights is consistent with the fact that inciting hatred does not necessarily include calls for violence or other criminal acts, but that attacks committed by insulting, mocking or slandering certain groups of the population may be sufficient for the authorities to decide to suppress racist speech despite the freedom of expression that is exercised in an irresponsible way. Although the disputed Viber communication²⁸ does not contain elements of a direct call for violence against Roma and Egyptians living in the Konik settlement, it is coloured by insulting and humiliating comments that ridicule and label this community as "filthy" and one that "sucks". Such statements and stigmatizing comments justify and encourage distance and isolation towards Roma and Egyptians, further leading to discrimination and the deepening of ethnic distance. According to the relevant sociological surveys, the highest degree of overall ethnic distancing in Montenegro is precisely towards the Roma²⁹. Considering all the circumstances of this case, and the fact that the contested screenshot of the correspondence reached the general public through a social network, the Protector assessed that it is incompatible with the values of democracy and human rights, and therefore, in accordance with Article 17 of the Convention, it may not enjoy the protection of the right to freedom of expression referred to in Article 10 of the Convention, because of which the Protector made recommendations to the

University of Montenegro:

- *To review, from the point of view of its competences, whether the participants in the communication from the screenshot of the correspondence in question are students of the Faculty of Architecture, and to take appropriate measures and actions accordingly;*
- *To prevent hate speech and promote counter-narratives, organize trainings for students, including the Faculty of Architecture, to familiarize them more with the right to freedom of expression, and/or the abuse of this freedom by violating the rights of others.*

Acting on the recommendations provided, the University of Montenegro informed us that the Quality Assurance and Promotion Commission of the Faculty of Architecture passed Conclusion no. 01-613/22 of 4 May 2022, and the Council of the same faculty adopted Decision no. 01-637/22 of 25 May 2022. At the same time, we were informed that the Faculty of Law, University of Montenegro, was informed about the content of that opinion with recommendations, so that the Human Rights Centre of that unit, through the Student Parliament of the University of Montenegro, would organize training on the details of the right to freedom of expression, and/or the abuse of this freedom through the violation the rights of others, all with the aim of preventing hate speech and promoting counter-narratives. In essence, it follows from the Conclusion that the Faculty of Architecture of the UMNE expresses its full support for all the activities of the Protector and condemns the vocabulary containing elements of discrimination and intolerance; that this institution is unable to determine the authenticity of the screenshot of the correspondence in question within a certain private Viber group, nor how it got onto the social networks; but that the Quality Assurance and Promotion Commission, for the purpose of preventing the spread of hate speech, recommends that the academic staff and all employees continuously remind students of the limits of freedom of expression and the general values of tolerance. The Decision of the Faculty of Architecture Council indicates that this Council reviewed the Conclusions of the Quality Assurance and Promotion Commission of the Faculty of Architecture in Podgorica and made the decision on the adoption of those Conclusions.

²⁷ ECHR *Vejdeland and others v. Sweden* (App. No. 1813/07), Judgment of 9 February 2012, paragraph 57

²⁸ *Ibid*, paragraph 55

²⁹ See for example Center for Democracy and Human Rights (CEDEM), "*Međuetnički odnosi i etnička distanca u Crnoj Gori*", June 2019

Example 3:

Unjustified interference in the sphere of private life by undermining the identity of Roma and Egyptians

Case description: In accordance with the provision of Article 28 (2) of the Law on the Protector of Human Rights and Freedoms of Montenegro, the Protector initiated the investigation of the violation of human rights and freedoms on their own initiative, because of the “Montenegro without Divisions” project launched by the Crnogorska kulturna mreža NGO. The announcement of Crnogorska kulturna mreža of 20 July 2022³⁰ presented the “Montenegro without Divisions” project, and in the original photos illustrating the project, the people of Montenegro are represented in national costumes, while the Roma are shown in the work uniforms of the cleaning utility company. The same photos were posted on billboards. After the reaction of the Roma community and organizations that deal with Roma rights, the controversial photos were removed from the billboards and the official website of the CKM, and the new photos show Roma in national costumes.³¹

Actions of the Protector: Considering the facts, the context and the circumstances of the case, it was necessary to determine whether the disputed photos, which were made public, abused the right to freedom of expression by violating the rights of others, under Article 17 of the Convention for the Protection of Human Rights and Fundamental Freedoms that prohibits the abuse of rights, as well as whether those photos, through the negative stereotyping of the Roma community, affected its identity, as well as feelings of self-worth and self-confidence, and thus produced consequences for the private lives of members of that community. In this regard, the Protector asked the Crnogorska kulturna mreža NGO to make a statement and inform us of the reasons for presenting the Roma community exclusively as utility company workers and not as a community that has its own uniqueness, its own culture, tradition and identity. Crnogorska kulturna mreža essentially stated that the CKM publicly apologized to all members of the RE population and to their umbrella institution, the Roma Council; that in the aforementioned campaign, they had no intention of discriminating against the Roma as a people, but that they were guided by the idea that, since it was impossible to provide their appropriate national costumes, it would still be better for them to appear in the campaign and thus not be discriminated against as people.

Protector’s assessment: Although the contested photos do not contain elements of a direct call to violence against the Roma community, they send discriminatory, insulting and humiliating messages, by equating the Roma national costume with the work uniform of the cleaning utility company. This kind of representation of the Roma community is particularly worrying because the photos were taken as a part of the “Montenegro without Divisions” project, the main objective of which should be to promote diversity and affirm the culture of acceptance through the authentic representation of all communities. The disputed photos made the name of the project meaningless and provoked anger and condemnation of the Roma community itself, deepening the feeling of isolation, marginalization and distance to which the Roma are still exposed according to relevant sociological studies.³² In relation to the question of whether the contested photos affected the social identity aspect of the Roma, it was pointed out that the concept of “private life” in the sense of Article 8 of the Convention is very wide and that it may not be defined exhaustively. The notion of private autonomy can refer to multiple aspects of an individual’s physical and social identity. To that end, the European Court of Human Rights accepted that an individual’s ethnic identity has to be considered an element of the right to private life.³³ In other words, when any negative stereotyping of a community reaches a certain level, it can affect the identity of that community, as well as the feelings of self-worth and self-confidence of its members. To that end, it may also affect the private life of members of that community.³⁴ Furthermore, the representation of Roma within the project of Crnogorska kulturna mreža led to

30 <https://www.crnogorska-kulturna-mreza.org/novi-projekat-ckm-a-crna-gora-bez-podjela/>

31 *Ibid*

32 See for example Center for Democracy and Human Rights (CEDEM), “*Međuetnički odnosi i etnička distanca u Crnoj Gori*”, June 2019

33 See *S. and Marper v. the United Kingdom* [GC], Nos. 30562/04 and 30566/04, paragraph 66, of 4 December 2008, and *Ciubotaru v. Moldova*, No. 27138/04, paragraph 49, of 27 April 2010

34 See *Aksu v. Turkey*, (App. Nos. 4149/04 and 41029/04), Judgement of 15 March 2012 paragraph 58

two complaints being filed with the Protector. Indignation, condemnation and discrimination, as well as a sense of humiliation and insult, were publicly expressed by representatives of organizations that provide protection, while members of the Roma community publicly expressed their protest by removing a part of the billboard on which there were Roma in the uniforms of the cleaning utility company, saying that no one will not humiliate them. Following the above, the Protector adopted the opinion that the representation of Roma in the work uniforms of the cleaning utility company is unacceptable and inadmissible, and that the negative stereotyping has affected their sense of self-worth and self-confidence, producing consequences for the private life of members of this community. In this regard, the disputed representation of the Roma led to unjustified interference in the sphere of private life by undermining their identity, contrary to Article 40 of the Constitution of Montenegro and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as such it may not enjoy the protection of the right to freedom of expression referred to in Article 10 of the Convention, which is why the recommendations were made to

Montenegrin cultural network NGO:

- *That in the future, through its project and other activities, it shall not discriminate against any community, but that, based on the principles of equality and the promotion of diversity, it represents all communities in an authentic manner, respecting their history, culture and traditions;*
- *To avoid justifying the discriminatory and humiliating treatment of a certain community by the lack of information and knowledge on certain issues, and to create and implement project activities based on complete, verified and reliable information.*

Example 4:

Discrimination motivated by prejudice against female member of the Roma community

Case description: The complaint was filed by the Roma Council on behalf of X.X. from Nikšić, pointing out discrimination in connection with open threats, attacks on her livestock and the burning of facilities. The complaint basically states: that X.X. from Nikšić, is a valuable and respected member of the Roma community who is engaged in animal husbandry; that in recent years, more and more unpleasant events have been observed, such as attacks on her livestock, the burning of facilities and open threats, which were duly reported, though this did not stop the expressions of hatred towards her; that on the night between 3 and 4 May 2022, her facility on Krnovo was set on fire, as a result of which she was left without accommodation for numerous animals; that she fears for her safety because a petition is being signed by the locals to stop her work; that the property she uses is not owned by her, but by the municipality.

Actions of the Protector: In order to establish the legally relevant facts and circumstances, the Protector initiated the procedure and requested a statement on the allegations from the complaint from the Police Administration - Nikšić Security Centre, as well as from the Municipality of Nikšić. The Police Administration was requested to provide a statement on the allegations in the complaint, as well as to inform us about the actions of the Nikšić Security Centre regarding the reports of X.X., both due to the events of the night between 3 and 4 May 2022, and the previous reports, if any. The Municipality of Nikšić was asked to provide a statement on the allegations in the complaint, as well as to inform us what it has undertaken, that is, what it plans to undertake in order to find modalities for an appropriate resolution of the X.X. case. From the file of the case before the Protector, it was determined that in the period from 30 October 2018 to 8 June 2022, the police officers of SC Nikšić acted on nine (9) reports from citizens, in which X.X. was the injured party, and on the basis of which nine (9) Requests for the initiation of misdemeanour proceedings due to committed misdemeanours in the area of the Law on Public Order and Peace were submitted. In the process of determining misdemeanour/legal liability, a fine was imposed against one (1) person; three (3) requests were rejected, while the procedure for five (5) requests is ongoing. Furthermore, on 26 February 2021, the police officers from the Nikšić Security Centre, acting on the report of X.X. in connection with the damage to the tombstone cross on the grave of her late father, formed a criminal case and filed a criminal complaint with the Basic State Prosecutor's

Office in Nikšić against the unknown perpetrator, due to the committed criminal offence of damage to a grave referred to in Article 411 of the Criminal Code of Montenegro, whereas, regarding the event on the night between 3 and 4 May 2022, they created case files that were submitted to the State Prosecutor of the Basic State Prosecutor's Office in Nikšić, for evaluation and opinion.

Protector's assessment: Starting from the established facts, context and circumstances, it is believed that the case should be examined from the viewpoint of the right to respect for private and family life referred to in Article 40 of the Constitution of Montenegro and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In this regard, and considering the immediate consequences of the events on the night between May 3 and 4, when the facility with the cattle of X.X. was set on fire, the authorities were responsible for her living conditions. Therefore, the question of the living conditions of X.X. undoubtedly falls within the scope of her right to respect for private and family life, and/or her home. According to the Protector's opinion, the police officers had to deal with the potential motive of bias with more diligence and caution, and they had to examine the indicators that could possibly suggest that the reported behaviour was motivated, completely or partially, by prejudice against X.X. because of her belonging to the Roma population. The continuity of the reports since 2018 required a more active attitude of police officers in terms of recording a potential motive based on prejudice, as the first step in the chain of protection. Considering that this case refers to endangering the safety and the physical and psychological integrity of X.X., and in connection with the disruption of her activity in the form of setting fire to facilities with her cattle, the Protector was of the opinion that, among other things, the behaviour reported on the night between May 3 and 4 had direct consequences on X.X.'s lifestyle, and therefore on her private and family life.³⁵ With regards to the above, recommendations were made to the

Police Administration - Nikšić Security Centre:

- *To examine possible future reports of the complainant, under the same and/or similar factual and legal circumstances, with due care for the indicators of prejudice in order to identify a potential motive of hatred based on prejudice(s) against the complainant;*
- *To monitor possible conflicts between the local population and the complainant, and to act both proactively and reactively in accordance with its powers.*

The recommendation was also sent to the

Municipality of Nikšić:

- *In accordance with the Local Action Plan for the social inclusion of Roma and Egyptians in the Municipality of Nikšić, to take measures and activities to improve the living and housing conditions of the complainant, providing her with unhindered conditions for engaging in animal husbandry as an activity that makes it possible for her to provide for herself and her family.*

After the recommendations sent, the Police Directorate - Nikšić Security Centre submitted a report in which, in essence, it stated that the police officers of the Nikšić Security Department, as before, will act extremely responsibly and professionally in response to all reports from citizens, including citizen X.X., in accordance with their legal powers, respecting the rights of every citizen guaranteed by the Constitution of Montenegro and the international conventions. It is further stated that the police officers, following the given recommendations, upon any future reports from citizen X.X. in the same or similar situations, as well as previous ones, will pay due attention to identifying a potential motive of hatred based on prejudices against X.X., as well as monitor the situation regarding possible conflicts between the local population and citizen X.X., and accordingly take appropriate measures and actions within their jurisdiction.

In the report on the action taken according to the given recommendation, the Municipality of Nikšić stated that the activities provided for in the Local Plan, which have yet to be implemented, are as fol-

³⁵ See similar, Judgement of the Grand Chamber of the ECHR in the case *Chapman v. the United Kingdom* [Chapman v. the United Kingdom [GC]], No. 27238/95, paragraph 73

lows: Analysis of the situation and implemented activities and measures, according to the activities of the Local Plan for the social inclusion of Roma and Egyptians in the Municipality of Nikšić 2018-2022; Identifying (non) legalized residential facilities; Analysis of the conditions in the Roma settlements and identification of activities and measures that need to be taken; Organizing campaigns on the importance of healthcare and the possibilities of implementation; Strengthening the capacity of RE mediators in the healthcare system; Strengthening educational institutions at the local level for the purpose of increasing the quality of education of Roma and Egyptians; Introducing adapted educational programmes for Roma and Egyptians in order to increase the level of qualifications and skills; Informing and motivating institutions and employers about the benefits of employing Roma and Egyptians. The report further states that, within the analysis of the conditions in Roma settlements and the identification of activities and measures that need to be taken, as criteria or potential criteria, the following can be singled out: inadequate access to drinking water; inadequate access to municipal and other infrastructure (sewage network, road network, electricity network, etc.); the poor structural quality of residential units (residential units built with inadequate construction techniques and/or from poor materials, residential units that have collapsed due to poor maintenance, etc., which are potentially dangerous for the safety of residents); overcrowding in the sense of the average density of inhabitants per unit area of the settlement and/or a large number of members per household; the uncertain legal status of facilities on plots (unsettled property-legal relations over facilities and land) etc.

Regarding the specific case of X.X., the Municipality of Nikšić states that X.X. was issued the approval for the construction of a temporary auxiliary facility - service facility, with accompanying facilities at the location of Trebješka Street, covered by SUR-GUR of the Municipality of Nikšić, in accordance with the Decision on granting the temporary use of land to X.X., until it conforms to its designated use ("Official Gazette of Montenegro - municipal regulations", No. 45/20), with the purpose of building a temporary facility for animal husbandry. The Municipality representatives point out that, upon the initiative of X.X., this approval was issued, and that the attack on the facility took place in another location, i.e. in Krnovo, which is why, as they state, the relocation of the facility and the unhindered performance of activities in any location is questionable, because it does not guarantee the further safety of X.X. regarding the potential repetition of incidents based on acts of hate, which is why they believe that the model for solving the problem should not be sought from the Municipality of Nikšić, but that the Police Administration - Nikšić Security Centre is competent to handle the issue, due to the need to identify a potential motive of hatred based on prejudices against X.X.

Example 5:

The potential eviction of Roma families from the Sutomore settlement in the Municipality of Bar and the threat of homelessness

Case description: After visiting three (3) settlements in Bar where Roma and Egyptians live on June 10, 2022, the Protector initiated the investigation into the violation of human rights and freedoms on their own initiative, in accordance with the provisions of Article 28, paragraph 2 of the Law on the Protector of Human Rights and Freedoms of Montenegro. During a visit to the Roma settlement of Sutomore (former children's resort) where several families live, we were informed that the families of X.X., X.Y. and X.Z. are threatened with the demolition of the facilities they live in and eviction. Because of this information, the Protector initiated the procedure on their own initiative in order to examine the validity of the allegations about the eviction of Roma families and the possibility of them remaining without residential facilities.

Actions of the Protector: In order to determine the legally relevant facts and circumstances, the Protector initiated the procedure and asked the Municipality of Bar and the Capital of Podgorica to comment on the information presented, as well as to inform us about what they have undertaken and/or what they plan to undertake to solve the housing needs of the residents of the Roma settlement of Sutomore. In the statement, the Municipality of Bar essentially informed the Protector that the competent authorities of the local administration approached the mentioned issue with special

attention in accordance with their competencies and capacities, promptly undertaking all of the actions of informing the competent institutions and organizations about the allegations related to the possible eviction of the families of X.X. X.Y. and X.Z. In the statement of the Secretariat for Culture, Sports and Youth of the Municipality of Bar, it was stated, in essence, that the Municipality of Bar, that is, the Secretariat, after receiving certain information and initial suspicions that the families of X.X. X.Y. and X.Z. may be left without adequate accommodation, instructed the officer in charge of minority rights and freedoms to collect real and credible information from the field, on the basis of which they would react in accordance with their competence; that on 10 June 2022, a field visit was organized by representatives of the institution of the Protector, accompanied by an independent advisor for minority rights and freedoms and a contact person from the Municipality of Bar, when statements were taken directly from the present members of the families of X.X. X.Y. and X.Z., who informed the present persons very briefly that "a man" had told them that they had to move because those barracks would supposedly be demolished; that the real estate folio in the land register number 99, CM Sutomore, on cadastral plot no. 2016/1 clearly indicates that the Children's and Youth Resort, i.e. the location where the Roma families are currently located, is the property of the State of Montenegro 1/1, which is at the disposal of the Capital of Podgorica 1/1; that they believe that solving this issue, considering the complexity and specifics of the situation, should be approached in a multidisciplinary and coordinated manner, first of all with the Capital of Podgorica, as well as with all the relevant institutions and entities at the local and state level; that the Municipality of Bar will resolutely strive to protect all the guaranteed human rights and freedoms so that, in this specific case, it will undertake all measures and activities in accordance with its actual capacities and legal possibilities. The Information of the Capital of Podgorica basically states: that the resort facility is owned by the Capital, that the detailed planning document does not foresee the existence of this type of facility, and that its condition has been unsatisfactory for years, which is why the Capital plans to valorise this property, carefully and in accordance with the regulations, and use the financial resources to improve the condition of the resort on Veruša; that the Capital did not take any steps to request the current users of these facilities to vacate them, as they were not even informed that it was being used for residential purposes; that the residents of Bar, who are staying in the facilities of the Resort in Sutomore, have the right to request a resolution of their status, in accordance with the regulations governing this field; that this particular case is about residents of another municipality, which is why the Capital of Podgorica has neither institutional nor other options for action.

Protector's assessment: As the most important questions in this case relate to the rights protected by Article 40 of the Constitution of Montenegro and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Protector first considered whether the eviction of the families of X.X. X.Y. and X.Z. represented an interference with the rights protected by these Articles. It is indisputable that the families of X.X. X.Y. and X.Z. have been living for several years in an abandoned resort and a shack/tin facility that they subsequently built, on land owned by the State of Montenegro 1/1, and disposed of by the Capital of Podgorica 1/1. However, no steps have been taken to evict them for years, which means that the local authorities have de facto tolerated the illegal Roma settlement, so the families of X.X. X.Y. and X.Z. based their lives on the expectation that such inactivity would last. In the opinion of the Protector, this fact was of exceptional importance and should have been taken into account. A potential eviction would leave the Bisljimi families with more than ten children homeless. Under the given circumstances, the Protector considered that the homes of X.X. X.Y. and X.Z., due to the fact that they have no other spare accommodation, represent their "homes" in the sense of Article 8 of the Convention. According to the position of the European Court of Human Rights, this classification is based on the factual situation and does not depend on the question of the legality of their possession according to domestic legislation.³⁶ Furthermore, it should be considered whether this interference, if realized, would be in accordance with the law and necessary in a democratic society in order to achieve one or more legitimate goals specified in paragraph 2 of Article 8 of the Convention.³⁷ The Protector does not dispute that it is legitimate for the authorities to try to regain possession of the land from persons who do not have the right of state ownership over it. In addition, it is indisputable that in the settlement of Sutomore, there is a dilapi-

³⁶ See Judgment in *McCann v. the United Kingdom*, No. 19009/04, paragraph 46, of 13 May 2008

³⁷ See *Buckley v. the United Kingdom*, of 25 September 1996, p. 62 and 63.

dated and worn-out facility of a former children's resort that does not meet the relevant construction and urban planning requirements. In this regard, it is the legitimate intention of the local authorities to valorise the land and facilities used by the families of X.X. X.Y. and X.Z. The improvement of the urban environment by removing buildings that do not meet the relevant architectural and technical conditions is a legitimate goal in the interest of economic well-being and the protection of the health and rights of others and can in principle justify the interference with the rights referred to in Article 8 of the Convention, which is why in this specific case, there is a question of the "necessity of the measure in a democratic society". In relation to the question of the necessity of eviction, the national authorities are obliged to demonstrate that eviction is necessary, otherwise the legitimate interest of the state to control its property is secondary to the right of individuals to respect for their home.³⁸ The potential measure of eviction should likewise be followed by consideration of all special circumstances, such as family circumstances, the number of children, social status and the possible consequences, such as homelessness. In this particular case, the Municipality of Bar and the Capital of Podgorica would have to take into account the vulnerable position of the families of X.X., X.Y. and X.Z, their poor social and material status, as well as being burdened with the risk of homelessness. This further means that deciding on the time and modes of possible eviction should be accompanied by the provision of alternative accommodation, assistance in regulating the status in Montenegro (if this has not been resolved), as well as support in exercising the right to social housing. Following the above, and for the purpose of preventing unjustified interference with the right to respect for the private and family life of the families of X.X., X.Y. and X.Z., who are at risk of being evicted from the buildings they live in, the Protector recommended to the

Municipality of Bar:

- *If it has not been done so far, to adopt the Local Social Housing Program and the Decision on Social Housing, in accordance with the obligations from the Local Action Plan for the Social Inclusion of Roma and Egyptians in the Municipality of Bar 2020-2022;*
- *To identify members of the RE population as possible users of social housing, including the Bisljimi families from the Sutomore settlement, and/or define whether the Bisljimi families meet the legal requirements for exercising the right to social housing, and to provide them with help and support in this sense.*

A separate recommendation was sent to the

Municipality of Bar and the Capital of Podgorica:

- *Recognizing the complexity of the situation of the Bisljimi families, to start resolving the issue of their housing, and in case of certain valorisation of the property of the former children's resort in Sutomore, to provide them with alternative accommodation, assistance and support in solving the housing issue and preventing the risk of homelessness.*

After the recommendations sent, the Capital of Podgorica submitted to the Protector the information of the Administration for the Protection of Property and Legal Interests of the Capital of Podgorica and the document of the Property Directorate, with attachments.

However, the Protector is concerned about the approach of the Administration for the Protection of Property and Legal Interests of the Capital of Podgorica, which states that "the opinion is not legally binding, but the head of the body to which the opinion containing the recommendation is submitted (that is, the person who manages it) is obliged to submit a report on the actions taken to implement the recommendation, and that if the head of the authority does not act on the recommendation within a certain deadline, the Protector may inform the immediately higher authority, submit a report or inform the public, in accordance with Article 42 (2) of the Law on the Protector of Human Rights and Freedoms ("Official Gazette of Montenegro" Nos. 042/11, 032/14, 021/17)." This attitude and approach to the opinion of the Protector attempts to derogate from the Protector's actions and, under the inaccurate perception that opinions are not legally binding, to release the body from responsibility for not taking measures and actions to implement the given recommendation

³⁸ Ibid, para. 118 (v)

in order to provide alternative accommodation, assistance and support in solving the housing issue and preventing the risk of homelessness. At the same time, the expressed position of the Property Directorate of the Capital of Podgorica that it is not competent to provide alternative accommodation, assistance and support when solving the housing issue of the families of X.X., X.Y. and X.Z is unacceptable, as is the action of the Capital of Podgorica regarding the matter in question, which forwarded to the Protector the documents of the Administration for the Protection of the Property and Legal Interests of the Capital of Podgorica and the Property Directorate of the Capital of Podgorica, in which they declare themselves de facto incompetent and/or announce that they are not acting on the recommendation of the Protector.

Example 6:

Municipal waste and faeces spilt in the yard of the Riverside settlement in Berane as an aspect of the disruption of private and family life and/or home.

Case description: After visiting five (5) Roma settlements in Berane on 11 May 2022³⁹, the Protector initiated an investigation into the violation of human rights and freedoms on their own initiative, in accordance with the provisions of Article 28 (2) of the Law on the Protector of Human Rights and Freedoms of Montenegro. In the Roma settlement of Riverside, the issue of access to the constructed municipal infrastructure was found, which, among other things, is reflected in the irregular collection of municipal waste and the unregulated sewage network. The residents pointed out to the representatives of the Protector that there were no containers and that the settlement was full of waste. At the same time they expressed their fear of being infected, due to the issue with faeces spilt in the settlement's yard.

Actions of the Protector: In order to determine the legally relevant facts and circumstances, the Protector initiated the procedure and asked the Municipality of Berane to comment on the status discovered during the visit, as well as to inform us about what they have undertaken and/or what they plan to undertake for the purpose of the regular collection, transport and disposal of municipal waste and the maintenance of the sewage system in the Riverside settlement. The Municipality of Berane sent a statement, basically stating that the mentioned location is a priority, but that the arising issues are beyond the competence of "Komunalno" d.o.o. Berane; that the reports of the waste removal officer, both written and oral, indicate that the containers are empty at the mentioned location, and that the residents of Riverside unload the waste outside the containers and that they themselves determine the places where they dispose of waste, which are not accessible to the company mechanization or are difficult to rehabilitate, representing a particular issue; that the residents of the Riverside refugee settlement do not pay for municipal waste removal services, nor does the Municipality of Berane pay additional funds for the aforementioned services, and that the cost of services is borne by society. In the course of the procedure before the Protector, the representative of Roma and Egyptians in the Municipality of Berane informed us that several containers were placed in the Riverside settlement and that municipal waste was regularly taken away, and submitted the related photos. At the same time, he informed us that the issue with faeces has not been solved, and he also provided photos.

Protector's assessment: Considering the situation observed during the visit, the Protector believes that this case should be observed from the point of view of right to respect for private and family life guaranteed by Article 40 of the Constitution of Montenegro and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In this specific case, it was not a question of the state's negative obligation to refrain from unjustified interference in the enjoyment of the right to private and family life, but whether the local authorities of the Municipality of Berane took all the relevant and sufficient measures to provide the residents of the Riverside settlements with the minimum conditions for a normal and dignified life, and/or to enable an undisturbed enjoyment of private and family life. In this regard, the municipal waste and faeces spilt in the settlement's yard are serious causes of environmental pollution that can affect the well-being of individuals and

³⁹ Press statement about the visits available at the Protector's website: <https://www.ombudsman.co.me/34771.news.html>

prevent them enjoying their home in a way that harms their private and family life, and which have the potential to seriously endanger their health.⁴⁰ The unregulated utility and sewage system thus undoubtedly had the potential to affect the health and quality of life of the Riverside residents. According to the statement of the Municipality of Berane and the documented information submitted by the representatives of the Roma and Egyptians in the Municipality of Berane, it appeared that after the visit of the Protector, activity on the part of the utility company in the Riverside settlement was recorded, as several containers were placed and the regular collection of municipal waste started; that the situation at that time was much more orderly compared to what was found during the visit, as well as that the utility company ensures continuity in the management of municipal waste in the Riverside settlement. Due to the aforementioned circumstances, the Protector suspended the procedure related to utility activity, finding that the Municipality of Berane, and/or “Komunalno” d.o.o. Berane have meanwhile eliminated part of the violation of rights that led to the establishment of the case. However, in the statement submitted to the Protector, the Municipality of Berane did not mention the allegations of spilt faeces, nor what it has undertaken or plans to undertake in order to eliminate the issue with the maintenance of the sewage system in the Riverside settlement. The protector pointed out that the maintenance of the sewage system certainly represents an integral part of the broader concept of human security as the basis of development. When the conditions for the smooth functioning of that system are not met, citizens face the risk of various sources of infection that are dangerous to life and health, and represent a permanent obstacle to meeting basic needs and living in dignity. The persistent and long-term issue with faeces, which in this particular case was spilt in the settlement’s yard, by its very nature has harmful consequences for the health and human dignity of the residents, violating the core of the right to private and family life, and/or home. The observed situation was made even more serious by the fact that the residents complained that their children were at risk of getting infected from faeces every day. The unregulated sewage system significantly disturbs the daily life of the Riverside settlement residents, creates a source of unpleasant odours and various infections, which, de facto, does not make it a desirable, conditional and safe place to live. By failing to undertake the necessary activities regarding the elimination of the issue, the Municipality of Berane and “Vodovod i kanalizacija” d.o.o. Berane failed to protect the Riverside settlement residents from potential infection due to spilt faeces and to provide the minimum conditions for a dignified life, thereby violating the essence of the right to enjoy private and family life, and/or home, guaranteed by Article 40 of the Constitution of Montenegro and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Following the above, the Protector recommended to the

Municipality of Berane and “Vodovod i kanalizacija” d.o.o. Berane:

- *To visit the Riverside settlement without delay in order to identify the issue that caused the spill of faeces and to take all necessary measures and actions for the rehabilitation and maintenance of the sewage system.*

The Municipality of Berane and “Vodovod i kanalizacija” d.o.o. Berane failed to submit a report on the measures and actions taken to implement the recommendation, and the Protector will continuously monitor the implementation of the recommendation made.

Example 7:

Disturbed neighbourly relations based on a potential motive of hatred

Case description: On behalf of X.X. and his family, the Roma Council filed a complaint stating that they have been suffering verbal abuse and harassment from their neighbour Y.Y. 2. The complaint essentially states: that the verbal abuse is based on the nationality of the X family; that the neighbour, among others, insults and threatens them saying: Gypsies, you stink, I will slaughter you, I will kill your children, you will have no peace from me; that she often took the garbage and threw it onto their property, then she would take the water hose and if the windows of their rooms were open, she

⁴⁰ See the case before the European Court of Human Rights, *López Ostra v. Spain*, Judgement of 9 December 1994, paragraph 51

would soak everything; that they can't leave their grandchildren alone outside because the neighbour tells them to come over so that she can give them chocolate that will poison them, and if they come near her she will slaughter them. He has also been reporting the issues he has with her to the police and the inspectorate for almost eight (8) years, and they have been to court several times, but without results.

Actions of the Protector: In order to establish the legally relevant facts and circumstances, the Protector initiated the procedure and requested a statement on the allegations from the complaint from the Police Administration - Herceg Novi Security Centre, as well as the action of the police according to the records of the notification collected from the citizen on 13 August 2021, 25 September 2021, 27 September 2021, 18 October 2021, and 18 January 2022. The statement of the Herceg Novi Security Centre basically indicates: that the issue between two families in the neighbourhood, that is, the families XX and YY, has been continuing for a long period of time, that the police officers always acted upon reports regarding the issues, after which other competent authorities acted, too; that disturbed neighbourly relations were often reported to the police by YY, and that even in those cases, the police acted in a timely manner with the aim of raising the disturbed neighbourly relations and public order in general to a certain level so that the security and property of the mentioned parties would not be endangered. It was further stated that the ODT in Herceg Novi was informed about each reported case; in some cases misdemeanour proceedings were initiated at the Budva Misdemeanour Court - Department in Herceg Novi, and in some cases persons were warned about their behaviour and the consequences in the event of a violation of public order or the commission of a more serious offence. It was specified that, after the qualification of the event, on 1 March 2022, a criminal complaint was filed against YY from Herceg Novi for the commission of the criminal offence of endangerment with a dangerous weapon during a fight and argument under Article 154 (1) of the Criminal Code of Montenegro, as well as against WW from Herceg Novi for the commission of the criminal offence of light bodily injury under Article 152 (2) of the Criminal Code of Montenegro.

Protector's assessment: In the procedure before the Protector, it was established that the violence was reported to the police by family members of XX and family members of YY; that police officers acted on the reports filed, followed by other competent authorities; that police officers called the parties to the procedure, collected notifications and undertook other measures and actions to clarify the facts and circumstances relevant to specific events; that they informed the competent Basic State Prosecutor's Office of Herceg Novi about the reports; that in some cases, the persons were warned about the behaviour and the consequences; that in some cases, misdemeanour proceedings have been initiated at the Budva Misdemeanour Court - Department in Herceg Novi, and that some proceedings are still ongoing, that, after qualifying the event, on 1 March 2022, criminal charges were filed against YY from Herceg Novi, as well as WW from Herceg Novi, to the ODT from Herceg Novi, as already described in more detail. The Police Administration - Herceg Novi Security Centre acted on the reports filed in accordance with its powers. Certain cases were resolved in court, whereas some court proceedings are still ongoing. However, the disturbed neighbourly relations still persisted and both sides kept on filing reports. In this regard, the Protector found that these circumstances required a more proactive reaction and the more intensive cooperation of the competent authorities, which is why the Protector made the recommendation to

Police Administration - Herceg Novi Security Centre:

- *To continue to undertake measures and actions within its competence, aimed at the more efficient and effective protection of vulnerable groups, especially if the illegal action is based on the motive of hatred due to the personal feature that characterizes the victim.⁴¹*

Based on that recommendation, the "Jug" Regional Security Centre "South" - Herceg Novi Security Department, submitted a report on its actions, in essence stating that since the receipt of the opinion of the Protector, several reports have been received regarding the issues between the families of XX and YY, submitted by both the family of XX and the family of YY. The Report specifies: that the

⁴¹ Opinion available at: https://www.ombudsman.co.me/docs/1664265639_24052022_preporuka_hn.pdf

report was filed by telephone on 7 June 2022, by XX, that it was treated immediately after the collection of the initial notifications, that an informative interview was held with the reported YY and that she was warned of the consequences of the reported behaviour; that the report filed by YY against XX on 23 June 2022 was treated in the same way, and that after the measures and actions taken and the notifications collected, XX was warned of the consequences of his behaviour; that the procedure according to the report of 29 August 2022, filed by YY against the family members of XX, also ended with a warning to the reported persons; that according to QQ's report of 29 August 2022, the reported YY was warned about her behaviour; that according to XX's report of 14 September 2022, an informative interview was conducted with the reported YY, a notification was collected on the circumstances of the report, after which she was warned about her behaviour; that according to the report of 24 October 2022, by which XX reported YY for disturbing his family with noise, an informative interview was conducted with the reported YY and that she was warned about the behaviour; that according to the report of 24 December 2022, in which XX reported that YY again made noise and played loud music in the morning, and after he warned her to stop that behaviour, she insulted him, in relation to which XX and YY were warned about their behaviour; that according to the report of 10 January 2023, in which YY reported a member of the family of XX for insulting her and pouring water over her, a notification was collected from the family member of XX about the circumstances of the report, when he denied the allegations completely, so the persons were warned; that according to the report dated 26 January 2023, in which XX reported YY for disturbing him during his rest, the police officers went to the scene, interviewed the person who filed the report and the reported person and warned them about their behaviour. The Report also states that in addition to acting on the described reports, which resulted in a warning to one side or the other, on several occasions, and when there was adequate evidence for this, the police officers processed the reports to the competent authorities, and in that sense they emphasize: that according to the report of 26 September 2022, a request was submitted to initiate misdemeanour proceedings against YY due to the misdemeanour under Article 7 (2) of the Law on Public Order; that according to the report of 9 February 2023, a request was submitted to initiate misdemeanour proceedings against YY and XX due to misdemeanours under Article 7 (1) of the Law on Public Order; that according to the report of 20 February 2023, a request was submitted to initiate misdemeanour proceedings against YY and XX due to misdemeanours under Article 7 (1) of the Law on Public Order. Finally, for the purpose of normalizing the relationship between families of XX and YY, the police officers, as they state, held discussions with the actors involved in the issue on several occasions, which were also attended by representatives of the local self-government, municipal police and municipal inspection.

VI ROMA AND EGYPTIANS THROUGH THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

In this part of the Report, there are certain excerpts from the latest decisions of the European Court of Human Rights.

1. P.H. v. Slovakia, 37574/19, 8 September 2022

Violation of Article 2 - right to life - procedural and substantive aspects - positive obligations

- ineffective investigation into the incident involving the applicant falling out of a second-floor window at a police station, where she was being questioned after arrest
- the State responsible for the applicant's injuries, in the light of the officer's failure to continuously watch her under domestic rules for escorting persons.

The applicant is a Slovakian citizen, of Roma nationality, with sub-average intellectual ability. When she was 16 years old, in 2017, she had been caught red-handed while committing petty theft. This case concerns the incident of the applicant falling out of a second-floor window next to the toilet of a police station, where she was being questioned following her arrest on suspicion of theft, and the investigation that followed.

The court found that the investigation was inadequate from the point of view of not considering the overall situation, the presented evidence and the failure to implement procedural actions, as well as the pronounced negligible disciplinary punishment, and that decision was not even sent to the applicant, and the Constitutional Court misinterpreted her later appeal.

In the absence of any recollection by the applicant of the circumstances of her fall, the Court concluded that the domestic authorities had failed to care for her while in a vulnerable position in police custody. In particular, the police could have verified that the windows were locked, or ensured the guarding of the applicant in the toilet area by another person of the same sex, and thus her fall could have been prevented. The Court considered that the information at its disposal did not indicate that the applicant suffered discrimination under Article 14 of the Convention (prohibition of discrimination) either because of her ethnicity or because of her mental disability.

2. J.I. v. Croatia, 35898/16, 8 September 2022

Violation of Article 3 - prohibition of torture - prohibition of inhuman or degrading treatment - procedural aspect

- failure to effectively investigate alleged death threats against a vulnerable rape victim by her abuser and father, in breach of domestic law.

The applicant is a Croatian citizen, born in 1988. The case concerns the complaint of the rape victim that the authorities failed to seriously understand her allegations that her rapist - her father threatened to kill her during his prison leave. In May 2009, the applicant's father was convicted and sentenced to eight years' imprisonment on charges of multiple acts of rape and incest against the ap-

plicant. After the conviction, the applicant started a new life, changed her name, hairstyle and place of residence and underwent extensive therapy. During 2015, she contacted the police three times to report that her father was threatening her.

During his prison leave, he allegedly, through a relative, threatened to kill the applicant. She contacted the police, including after seeing her father at the bus stop. The police never opened an investigation, even though a serious threat by a family member is a criminal offence prosecuted ex officio under domestic law. The applicant's complaint about the police conduct resulted in an unsuccessful internal investigation at the Ministry of the Interior. The Constitutional Court declared the applicant's complaint inadmissible.

The court specifically determined that, although the applicant informed the police three times about the serious threat to her life by her rapist, the police never undertook any preliminary investigation, let alone opened an investigation. The authorities were aware that the applicant was particularly vulnerable as a Roma woman and a victim of serious sexual crimes and therefore should have reacted quickly and effectively to protect her from the threats of her rapist, as well as from intimidation, retaliation and re-victimization.

The Court unanimously found that, considering that, when examining the applicant's complaints based on Article 3 of the Convention, it already took into account her special vulnerability, no special issues arise based on Article 14 of the Convention (prohibition of discrimination).

Some important paragraphs of the judgement: Paras. 44-47: relevant international law:

- Council of Europe documents;
- Report of the UN Special Rapporteur on violence against women, its causes and consequences, on her mission to Croatia;
- relevant European Union law.

Paras. 83-90: a new factual scenario and a novelty in court practice – the applicant, a highly traumatized victim of rape and domestic violence, indirectly received death threats from her abuser, who received prison leave while serving his sentence; the applicant's physical and psychological integrity, her particular vulnerability due to her gender, ethnic origin (Roma) and past trauma; intimidation and re-victimization; the obligation to effectively investigate a particularly vulnerable rape victim's allegation of a serious threat to her life (paras. 83 and 84: general principles).

3. L.F. v. Hungary, 621/14, 19 May 2022

Violation of Article 8 – right to respect for private and family life – home • No legal basis for inspections of the applicant's house by various municipality authorities.

The applicant, now deceased, was a Hungarian citizen, born in 1956. His widow and children continued the proceedings on the complaint on his behalf.

The case concerns the inspection of the applicant's home - retroactively justified by the need to check for compliance with construction regulations and the allocation and/or review of housing benefits - in 2011 by a delegation from the local mayor's office. The inspection was carried out as part of a new social scheme and at a time of heightened tensions between the Roma and non-Roma populations.

The court found that the reasons given by the mayor's office for the inspection had no legal basis. The construction regulations were not applicable in this case, and the regulation referred to in relation to housing benefits was irrelevant, as there was no official procedure in progress to allow the authorities to enter the applicant's home.

Regarding the complaint based on Article 14 (prohibition of discrimination) in conjunction with Article 8, the Court noted that the applicant did not repeat his argument that the inspection had racist overtones in the last proceedings related to his case. The court therefore dismissed that complaint due to the non-exhaustion of domestic remedies.

4. Paketova and Others v. Bulgaria, 17808/19, 36972/19, 4 October 2022

Violation of Article 8 - right to respect for private and family life - home - related to Article 14 - prohibition of discrimination - positive obligations • authorities' omissions resulting in ethnic Roma being driven away from their homes after anti-Roma protests and not being able to return • officials' repeated public display of unacceptance of the Roma and opposition to their return, reinforcing the applicants' legitimate fear for their safety and representing a real obstacle to their peaceful return • the disadvantaged and vulnerable position of the Roma and the need for their special protection • failure to provide measures of special protection and information on assistance.

The applicants are 56 Bulgarian nationals, members of several families of Roma origin. The case concerns their allegations that they had been forced to leave their homes and prevented from returning subsequently, in the context of public protests against the Roma population, and that the authorities had refused them protection in an environment of racially based hostility.

Some important paragraphs of the judgement: Paras. 103 and 104: relevant international materials – Concluding Remarks of the United Nations Human Rights Committee on the fourth periodic report of Bulgaria on the country's implementation of the International Covenant on Civil and Political Rights (November 2018) and the report of the United Nations Human Rights Council's independent expert on minority issues, which followed the visit to Bulgaria in 2011.

5. Elmazova and Others v. North Macedonia, 11811/20, 13550/20, 13 December 2022

Violation of Article 14 – prohibition of discrimination – related to Article 2 of Protocol 1 – right to education

- discrimination against Roma pupils on account of their segregation in two State-run primary schools attended predominantly by Roma children and with Roma-only classes respectively
- The state's failure to take desegregation measures to correct the applicants' factual inequality and to avoid the perpetuation of discrimination resulting from their over-representation in one of the district's school
- segregation in both schools not objectively and reasonably justified by a legitimate aim.

Article 46 – the bindingness and execution of judgements – execution of judgment • Respondent State required to take individual measures to end the segregation of Roma pupils in the two State-run primary schools.

The applicants are 87 North Macedonia nationals of Roma origin, born between 1958 and 2013. They are the pupils of the two State-run primary schools in Bitola and Shtip and their parents. The case concerns alleged segregation between Roma and Macedonian pupils, who were mostly placed in different schools in the town of Bitola, belonging to the same area, and in different classes in Shtip.

Although the applicants were in a similar situation, only some of them filed a constitutional complaint with the Constitutional Court alleging discriminatory practice/segregation in the enjoyment of their right to education, but without success. The Constitutional Court dismissed the constitutional appeal, but, in a joint dissenting separate opinion, judges S.M., O.K. and N.A. stated that the applicants had submitted sufficient evidence to demonstrate the difference in treatment in the enjoyment of their right to education.

The European Court specifically found that, although there may not have been a discriminatory intent on the part of the state, *de facto* the situation – Roma primary school pupils who were filtered

into different schools and classes from ethnic Macedonians – did not have an objective justification and thus led to educational segregation.

Some important paragraphs of the judgement: Paras. 6-8: proceedings before the Constitutional Court. Paragraph 34: international materials - European Commission against Racism and Intolerance General Policy Recommendation No. 13 on combating antigypsyism and discrimination against Roma, adopted on 24 June 2011 and amended on 1 December 2020. Paragraph 63: Article 35.1 – the fact that some applicants did not use this remedy before the Constitutional Court, used by other applicants whose situation was similar, cannot be regarded as a failure on their part to exhaust the domestic remedies in this case. Paras. 68-78: discrimination against Roma in the enjoyment of their right to education (absence of any discriminatory intent on the part of the State) – the school acknowledged the existence of the segregation and took certain measures to tackle the problem, but all its attempts and suggestions, including the redistribution of pupils in the classes, did not materialise mainly because of the opposition shown by the parents of non-Roma children. Paras. 88 and 89: Article 46 – individual measures for ending the segregation of Roma.

6. M.B. and Others v. Slovakia, 45322/17, 1 April 2021

No violation of Article 3 - prohibition of torture - inhuman or degrading treatment - substantive aspect

- alleged ill-treatment by the police of applicants who are of Roma ethnicity and minors at the time
- The Court was unable to establish beyond reasonable doubt that the applicants were exposed to treatment contrary to Article 3.

Violation of Article 3 - effective investigation - procedural guarantees of Art 3 applicable: applicants' ill-treatment allegations sufficiently credible giving rise to an obligation to investigate

- inadequate investigation due to a lack of promptness and the authorities' failure to investigate any possible racist motive, ethnic hatred or prejudice behind the incident.

The applicants are three Slovakian nationals, born in 1992, 1995 and 1993.

The case concerns an incident of the ill-treatment of applicants that is alleged to have taken place in a police car after the applicants' arrest due to a suspicion of assault and robbery, followed by another incident that is alleged to have taken place at a police station to which the applicants were brought, which is the subject matter of a separate complaint to the Court (number 63962/19).

Referring in particular to Article 3, the applicants complained of ill-treatment by the police and the shortcomings in the subsequent investigation thereof.

7. M.B. and Others v. Slovakia (2), 63962/19, 7 February 2023

Violation of Article 3 - prohibition of torture - inhuman or degrading treatment - substantive and procedural aspects

- the inhuman and degrading treatment of the applicants, minors of Roma ethnicity, by officers at a police station
- ineffective investigation.

No violation of Article 14 - prohibition of discrimination - related to Article 3 - substantive aspect • insufficient evidence that the applicants' ill-treatment was racially motivated

Violation of Article 14 - prohibition of discrimination - related to Article 3 - procedural aspect • the authorities' failure to investigate possible racist motives.

The applicants are six Slovakian nationals. They are Roma.

The applicants were arrested in 2009 on suspicion of robbing a 66-year-old woman. They were taken to a police station. The applicants averred that they had been threatened, bitten by the dogs, beaten, kicked and verbally abused there. The claim was disputed by the Government. The recording made using a mobile phone was subsequently released into the public domain, with the alleged treatment the applicants had been subjected to, including orders to slap and then kiss each other.

Referring to Article 3 (prohibition of torture - prohibition of inhuman or degrading treatment), Article 13 (right to effective remedy) and Article 14 (prohibition of discrimination) of the Convention, the applicants complained about the ill-treatment by the police, the failure of the State to protect them, lack of an effective remedy for their complaints, that their ethnicity was the primary reason for their ill-treatment and that in the investigation that followed, the authorities did not take all reasonable steps to uncover the racist motive behind the events.

6.1. CASES RELATED TO MONTENEGRO

1. *Ranđelović and Others v. Montenegro*, 66641/10, 19 December 2017

Established violation of the procedural aspect of the right to life under Article 2 of the Convention in relation to the eleventh applicant, due to the lack of an effective investigation into the disappearance of her family members after a boat sinking in August 1999.

The case was initiated by a petition against Montenegro submitted to the Court by thirteen citizens of Serbia, one of whom was also a citizen of the Former Yugoslav Republic of Macedonia, on 23 March 2011. During the night of 15 August 1999, around seventy Roma boarded the "Miss Pat" boat on the Montenegrin coast with the intention of being transported to Italy. A few hours later, the ship sank due to too many passengers. By 30 August 1999, one passenger had been found alive on the Montenegrin coast, and thirty-five bodies had been found in the sea, thirteen of which were identified by their relatives. The forensic specialists who performed autopsies on the bodies until 30 August 1999 stated that the cause of death could not be determined with certainty based on the autopsy alone. Still, according to their opinion, the cause of death was drowning. On 1 September 1999, the Basic Court in Bar issued a decision on conducting an investigation against seven persons due to the well-founded suspicion of the illegal crossing of the state border and causing general danger. The applicants, as the closest relatives, claimed in particular that there was no proper and effective investigation into the death and/or disappearance of their family members and that those responsible were not brought to justice.

The Roma Centre complained to the Protector of Human Rights and Freedoms of Montenegro, asking them to speed up the criminal proceedings and punishment of the persons responsible, as well as DNA analysis of the buried bodies. On 7 December 2009, the Protector filed a report on this matter basically stating that the investigation had lasted for more than seven years and that ten years after the disputed event, the criminal procedures had not yet been concluded, which was unjustified. He recommended that the High Court take all necessary steps to conclude the proceedings as soon as possible. On 21 December 2010, the Protector asked for information about what happened in the meantime. The trial judge informed the Protector about the main hearings scheduled between October and December 2010.

The Court reiterated that the obligation stipulated in Article 2 to protect the right to life imposes a procedural obligation on the state to investigate the death, not only of civil servants but also of unknown individuals. The main purpose of the investigation is to "ensure the effective implementation of domestic laws that protect the right to life." In order to be effective, the investigation needs to enable the identification and punishment of the responsible persons. Although this is not an obligation of results but of means, any deficiency in the investigation that reduces the possibility of determining the circumstances of the case or the persons responsible risks deviation from the required standards of effectiveness. In this specific case, in the period between 28 September 2009 and 9

July 2014, fifteen main hearings were held, whereas a total of twenty-two main hearings were postponed for various procedural reasons. The Court found that, although probably not all delays could be attributed to the Respondent State, none could be attributed to the eleventh applicant. After more than ten years and seven months since the disputed event, the disputed criminal proceedings were ongoing before the second-instance authority, the accused were acquitted by the first-instance court in July 2014 due to a lack of evidence. In this regard, the Court found that the delays could not be considered compatible with the obligations of the state based on Article 2, and that the investigation and subsequent criminal proceedings were not in accordance with the requirements of speed and efficiency. Based on that, a violation of Article 2 of the Convention was established.

2. Alković v. Montenegro, 66895/10, 5 March 2018

The established violation of the right to respect for private and family life referred to in Article 8 of the Convention and the principle of non-discrimination referred to in Article 14 of the Convention, due to the state's failure to properly implement protection mechanisms and protect the applicant from racist attitudes and violent actions.

The case was initiated by a petition against Montenegro submitted to the Court by a Montenegrin citizen, Mr Rizo Alković ("applicant"), on 9 November 2010. The European Roma Rights Centre intervened as a third party in the proceedings. The applicant was born in 1960. He lived in Belgium, but at the time of the disputed events, he was living in Podgorica. The applicant is Roma and Muslim. On an unspecified date in 2006, the applicant and his family moved into an apartment in a building built for socially disadvantaged families. According to the applicant, due to constant attacks in which his car and apartment were damaged, the perpetrators of which were never found, he installed cameras in front of the apartment. In particular, the applicant complained that the authorities did not conduct an effective investigation into a series of ethnically and/or religiously motivated attacks on him by individuals between 26 May and 22 September 2009.

The Court found that the shortcomings in the investigation led to the fact that the shooting and the threat of 22 September 2009 remained practically without legal consequences, and that the applicant was not provided with the necessary protection of the right to psychological integrity. The applicant could not benefit from the implementation of a legal framework that provides effective protection, all the more so because the applicant is a Roma and a Muslim and there was not one, but several isolated incidents against him. The constant conflictual relations between the applicant and his neighbours, as well as his contribution to those conflicts, were not, for the Court, a justifying factor for the ineffective response in relation to the applicant's reports regarding shootings and threats. In this regard, the Court considered that the manner in which the mechanisms of criminal law were implemented in this specific case by the judicial authorities was deficient to the extent that it represented a violation of the obligations of the Respondent State based on Article 8 of the Convention in connection with Article 14 of the Convention.

VII PHOTOS FROM THE FIELD VISITS TO SETTLEMENTS AND THE INTERVIEWS CONDUCTED

THE CAPITAL OF PODGORICA



BIJELO POLJE



BERANE







NIKŠIĆ





BAR





ULCINJ





TIVAT



HERCEG NOVI



KOLAŠIN



MOJKOVAC



GUSINJE



PLAV



ANDRIJEVICA



VII CONCLUSIONS

- The position of the Roma and Egyptians in Montenegro is still unfavourable in all key aspects of life, from social and economic status, to education and exclusion from political participation;
- Roma and Egyptians belong to one of the most discriminated groups and thus the continuous and systematic application of special regulations and measures is necessary in order to achieve essential equality and overcome barriers that hinder inclusion;
- Poverty among Roma and Egyptians is 4 to 5 times more prominent than among the rest of the population;
- The key issues that hinder, slow down or prevent the social inclusion of Roma and Egyptians are primarily related to the low level of education and professional skills; lack of personal documents and unresolved legal status; unfavourable economic and social position; informal employment and a very limited range of jobs; living in unsafe and non-standard residences; living in unsafe and non-standardized housing, lacking permanent sources of income etc.;
- Roma and Egyptians are mainly employed in the utility sector, in the field of maintaining hygiene, collecting secondary raw materials and performing manual work;
- Roma and Egyptians mostly live in settlements that are separated from settlements with non-Roma population, resulting in increased social distance, marginalization and exclusion. Certain facilities do not meet the minimum standards for a decent living and enjoyment of the right to private and family life and home;
- There are no Roma and Egyptians in political decision-making in Montenegro, which is one of the obstacles to participation in decision-making directly concerning them. The participation in the decision-making process is limited to direct voting during the elections;
- Although some progress has been achieved in quantitative terms, the quality of education of Roma children still causes concern. The cause of the poor quality of education is reflected, among other things, in the access to and insufficient training of staff, the insufficient number of mediators, the distance between the places of residence of Roma and Egyptians and the schools, and the lack of free transportation in all municipalities, etc.;
- The unresolved legal status in Montenegro and the lack of personal documents prevent the full enjoyment of rights and freedoms, including access to healthcare and social welfare services and other services;
- The issue of the ownership of constructed facilities and unresolved property-legal relations regarding the land on which residential facilities were constructed, along with the legalization of buildings, requires a systemic and permanent solution, with continuous empowerment and the provision of legal and administrative assistance to Roma and Egyptians in the process of legalization. The resolution of other related issues depends on legalization, such as the improvement of infrastructure and/or the provision of sustainable access to municipal and other infrastructure (sewage network, road network, electricity network, etc.).

